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Transcriber's Office

Judiciary Committee
January 21, 2011

[LB12 LB13 LB61 LB88 LB100]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 21, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB61, LB12, LB13, LB88, and LB100. 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 and welcome to the Judiciary Committee. Welcome, Senator Heidemann. We don't see you that often, but good to see you. Let me introduce my colleagues today in the committee, and many of you know who they are, and some don't but our newest member, Senator Tyson Larson from O'Neill; Scott Lautenbaugh from Blair and other areas; Burke Harr from Omaha; Steve Lathrop from Omaha; Amanda McGill from Lincoln; Brenda Council from Omaha. LaMont Rainey is our legal counsel, and Oliver VanDervoort is our new committee clerk. So welcome, and we're going to take LB61 first. Senator Heidemann, if you would present the bill. For those who have not been here before, we do have a light system for our hearings. The system does not apply to the Appropriations Chair but everybody else, but we ask you to try to confine your comments to three minutes. We will give you an orange light to tell you to wrap up your comments, if you would, and that does not include questions. Obviously, if we ask you questions, you're certainly free to answer those. Welcome. []

SENATOR HEIDEMANN: Thank you, and I'll try to be brief. Senator Ashford, members of the Judiciary Committee, I'm Senator Lavon Heidemann spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB61. LB61 would increase the penalties for unlawful intrusion which is currently a Class III misdemeanor. Section 28-311.08 states that it should be unlawful for any person to knowingly intrude upon any other person without their consent or knowledge in a place of solitude or seclusion. Intrude is defined as viewing or recording either by video or audio or other electronic means of a person in a state of undress. Place of solitude or seclusion is defined as a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy. Under LB61, viewing a person without their knowledge or in a place of solitude or seclusion would increase to a Class I misdemeanor. If the intrusion is video or audio or electronically recorded, the penalty would increase to a Class IV felony. And if it's recorded and distributed, it would increase to a Class III felony. Last May, a constituent contacted me, telling her personal story about...with video voyeurism. I won't go into the details as she is here today to testify before you. She was very distressed to learn that the minimal consequences for a crime that had such severe impact on her. After I received her e-mail, I contacted the county attorney, who also agreed that the penalty in current law for distributing video on the Internet of someone caught in a state of undress without their knowledge was deficient. A Class III misdemeanor, as found in the current law, is the same penalty given someone caught while operating a vehicle without a certificate of title or as

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another example, unlawfully hunting pheasants. I worked with the Attorney General's Office on this legislation as I wanted to increase the penalties for this crime, but did not want to make them out of line with similar offenses. I would like to thank the Attorney General's Office for their assistance. Video voyeurism is not only a sexual offense, but also a violation of basic human rights. The penalty should fit the crime, and I urge you to vote favorably for LB61. If you have any questions, I would try to answer them. [LB61]

SENATOR ASHFORD: Thank you, Senator Heidemann. Senator Council. [LB61]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Senator Heidemann, I don't know if you recall, but last year Senator Haar introduced a bill that was attempting to amend this exact same section to cover a situation that occurred in his district, and maybe this question is better left to... [LB61]

SENATOR HEIDEMANN: There's somebody from the Attorney General's Office... [LB61]

SENATOR COUNCIL: ...Attorney General's Office because... [LB61]

SENATOR HEIDEMANN: ...I am told that is going to follow us up actually and testify, so you could...if it's technical in nature, if it's money, I can help you out. If it's anything legal...(laughter) [LB61]

SENATOR COUNCIL: No, I mean...and just for your... [LB61]

SENATOR ASHFORD: Is that a promise, Senator Heidemann (laugh)? [LB61]

SENATOR COUNCIL: And just for your information, the reason Senator Haar brought the bill was that the statute as currently written, and this really doesn't change that, the county attorney advised the parties involved in that case that what had actually happened there did not constitute intrusion, and they couldn't find any other grounds to prosecute the individual on. So I don't know if you remember this...okay. [LB61]

SENATOR HEIDEMANN: I don't. Someone had mentioned that just today, that was the first that I had actually been aware of it. But, hopefully, we can come up with something to help this situation out, because it seems like there could be more done than what was done in this case. And, hopefully, you'll be able to find out. [LB61]

SENATOR ASHFORD: Thanks, Senator Heidemann. [LB61]

SENATOR HEIDEMANN: Thank you very much. [LB61]

SENATOR ASHFORD: Proponents for LB61? Good afternoon. [LB61]

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ROBYN ROBLES: (Exhibit 1) My name is Robyn Robles, R-o-b-y-n R-o-b-l-e-s. In July of 2008, my sister reached out to me by letting me stay with her and her husband in their home to finish high school. Her husband treated me kindly and acted like a father and mentor towards me. However, on April 9, 2010, I woke up early one morning and on his computer I saw dozens of pictures of me minding my own business, naked in the bathroom of the home. From the pictures, I could tell they had been taken over multiple days. I told someone I trusted, and they contacted the police for me. The police arrested him the following Monday, and he was released within a couple of days on \$150 bail. As it also turns out later, most of the charges for the crime were dropped, because he did this to me for so long, it exceeded the short statute of limitations. A month later, we found out that he had one picture of me posted on-line. It had almost 200 views and it was tagged, using my name, Robyn, spelled correctly. The picture dated back to September 2008. This was entirely legal. This wasn't just a sexual attack. I felt sexually violated and humiliated. That's not all of it. This was an attack on my human rights. I don't have the ability to feel like I'm not being spied on. When, you know, I'm washing, I cover up. I never leave the shower curtains to change. You know, I'm paranoid about being watched in my bedroom, and I pull a blanket over me to just like, surf the Internet, because, you know, if you've ever felt someone staring at you, it's pretty unnerving. This isn't all to avoid just being seen naked. If someone accidentally walked in on me, that happens, but I try to be as boring as possible to avoid being watched. If someone is recording me, I think they'll only record me for a few days, then get tired, and just stop. I might not know about this, but at least I can have that privacy. The sexual aspect is painful as well. This is my body, and he took liberties with something that wasn't his. He posted it on-line, and it can be out there for years. I don't get to have any control over who gets to see me naked. If I wanted to be a porn actress, I would have been one, but I didn't choose that. And at least they have privacy when they want and control over how they're seen. I've had other problems. I go through daily bouts of rage, and I've been diagnosed with PTSD. I don't believe my ex-brother-in-law is remorseful. It probably helps that the penalty for this is far less than for petty theft. There needs to be a way to get justice within the legal system. There are whole corners of the web devoted to hidden cameras. It's a fetish, and it's not just young women. There are spy videos of men and women, old or young. The law needs to advance with the technology. Before this happened, I would never have thought I could be affected by this as much as I have. I never freaked out about the idea of someone spying on me or was afraid that it was happening. When I saw my mom watching a video about video voyeurism, I thought it was creepy, but I didn't really worry about it...think anything of it but. [LB61]

SENATOR ASHFORD: Thank you, Robyn. [LB61]

ROBYN ROBLES: Sorry, I was kind of nervous so. [LB61]

SENATOR ASHFORD: You did great. You did very good...did very well. [LB61]

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ROBYN ROBLES: I don't speak a lot, so. [LB61]

SENATOR ASHFORD: Senator McGill. [LB61]

SENATOR MCGILL: You did a very good job. I'm just wondering how old you were when this happened. [LB61]

ROBYN ROBLES: I was 19 when it started. [LB61]

SENATOR MCGILL: It's horrible. I'm really sorry that happened to you. [LB61]

SENATOR ASHFORD: Any questions? Yeah, Senator Lautenbaugh. [LB61]

SENATOR LAUTENBAUGH: Do you believe that this is happening more often because of the prevalence of ever smaller recording devices? [LB61]

ROBYN ROBLES: Yeah. [LB61]

SENATOR LAUTENBAUGH: So you're saying this is something we need to do to keep up with the technology, if you will... [LB61]

ROBYN ROBLES: Yeah. [LB61]

SENATOR LAUTENBAUGH: ...and that it's probably going to become more and more prevalent as recording devices become smaller and easier to hide in places. [LB61]

ROBYN ROBLES: Um-hum. [LB61]

SENATOR LAUTENBAUGH: We frequently get grief here for always increasing penalties and always increasing penalties and sometimes it's deserved. But I do think what we have in current law is probably inadequate, and so I'm sorry you had to go through this but appreciate you coming here today. [LB61]

ROBYN ROBLES: Um-hum. [LB61]

SENATOR ASHFORD: Thank you, Robyn. [LB61]

SENATOR MCGILL: You did a good job. Thank you. [LB61]

SENATOR ASHFORD: Next testifier, and we'll pass that around. Thanks. [LB61]

ROBYN ROBLES: Okay, so just. [LB61]

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JOHN FREUDENBERG: Good afternoon. Chairperson and committee members, my name is John Freudenberg. I'm the Criminal Bureau chief of the Attorney General's Office. I'm also the current president of the Nebraska County Attorneys Association. On behalf of both organizations, I'm here to testify in support of LB61. The changes made by LB61 are relatively simple, set forth by Senator Heidemann. You have your original charge which is currently a Class III misdemeanor. We're increasing that penalty to a Class I misdemeanor. If you do the additional crime of recording it in some manner, it increases the penalty to a Class IV felony. And then if you do the final step, which is post that so others can view it or distribute it, it goes up to a Class III felony. You've heard the details of one tragic case that occurred down in Senator Heidemann's district. However, there's many more examples of this. There's the example of the photographer in Hall County who was secretly photographing women in his studio's dressing room; the person who installed a video camera in the high school girls' locker room in Blue Hill; and the police officer who was caught by a man while the officer was window peeking on the man's wife as she took a bath. So that's just a few of the cases that our office has been involved with over the last year. And these have normally been misdemeanors, so we haven't been involved with that many of them, because that's not the area that we get called in on in normal cases, but these are just three that we have. However, nationally, the highest profile case involving this type of activity is Erin Andrews. For those who might not be familiar with this case, Ms. Andrews is an ESPN sports reporter who was videoed while she was naked by a man through the peephole of her hotel room. He took the peephole out and turned it around. The man then posted the video on the Internet. If Ms. Andrews' victimization would have occurred in Nebraska under our current law, a three-month jail sentence and a \$500 fine was the maximum he could have received for it. Such a penalty does not accurately address that man's actions and certainly do not address the previous testifier's situation. In today's visual age, once an image is electronically released, it can never be retracted. That person, who has been victimized, continues to be revictimized every time that image is viewed, and then it's again shared. As Senator Lautenbaugh pointed out a moment ago, technology is getting better on how to hide these cameras, how to get them posted. It probably won't be that long before you can post directly from the camera to the Internet. So this bill would better enable the criminal justice system to address this type of situation, and, hopefully, it would deter people from doing this type of activity. I'd be happy to attempt to answer any questions you may have. [LB61]

SENATOR ASHFORD: Yes, Senator Larson. [LB61]

SENATOR LARSON: Just a quick technical question. Would live streaming be defined as recording, because as you mentioned, it might be able to go from the camera straight to the Internet. Is that considered actually recording it? [LB61]

JOHN FREUDENBERG: It would have to be determined if that was actually a recorded

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copy that was made, something that could be again distributed and rebroadcast. If one is, due to live streaming, it is determined that a recording was made, that would be an element that would have to be proven if we could. [LB61]

SENATOR LARSON: What if it's live streaming and was actually not recorded but live streaming to the Internet? [LB61]

JOHN FREUDENBERG: Well, you go directly to the distribution probably stage, but that would be a question...an element of the prosecution, we would have to be able to show that a recorded copy was somewhere being made. [LB61]

SENATOR LARSON: Can we put that in the bill possibly? [LB61]

JOHN FREUDENBERG: I'm sure that...this is Senator Heidemann's bill, but if that was a problem I'm sure that would be something that could be discussed. [LB61]

SENATOR LARSON: As an amendment. Because, I mean, I see especially as we continue to move through the digital age that could present itself as a problem. [LB61]

JOHN FREUDENBERG: I agree. We don't want to fall behind the curve on technology. [LB61]

SENATOR ASHFORD: Yeah, I mean, I think that is a point. Senator Lautenbaugh. [LB61]

SENATOR LAUTENBAUGH: Yeah. That's a very good point, and also, I think you alluded to this, and I'm wondering if you've seen that now there are digital cameras that are available that will link directly without wires to your cell phone which, of course, allows you to post things instantaneously to Facebook or whatever, so that future you talked about is already here and readily available. [LB61]

JOHN FREUDENBERG: Yeah, I'd have to ask my kids to catch me up with technology (laughter), but I'm sure it is. [LB61]

SENATOR ASHFORD: It's minute by minute, I think, but, yeah, Senator Council. [LB61]

SENATOR COUNCIL: And, Jay, you're here and you heard part of my question. And I don't recall whether you were involved when...with...or attempts to try to address the situation presented by Senator Haar's constituent. But the attempt was made to amend intrusion or to amend assault it was one of those, because it was a case of a viewing and the county attorney, under those circumstances, didn't believe they could prosecute under either the then existing intrusion or the assault. Were you involved in that at all? [LB61]

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JOHN FREUDENBERG: I'm sorry, Senator, I was not. I'm not familiar with the facts, but, obviously, if that's something that was brought to me, I would look at it and discuss it with others. [LB61]

SENATOR COUNCIL: Okay. Well, I would commit to you to look at Senator Haar's bill. I'm sure it was last year was... [LB61]

SENATOR ASHFORD: It was last year. [LB61]

SENATOR COUNCIL: It was last year, and one of the reasons he introduced the bill because they could not secure a prosecution of this individual. And my recollection is, he was standing in the yard looking in the house... [LB61]

SENATOR MCGILL: Yeah. Behind a bush or something. [LB61]

SENATOR COUNCIL: ...behind a bush or something, and for some reason, the county attorney didn't believe that it was a violation of either the intrusion... [LB61]

SENATOR MCGILL: Or something. [LB61]

SENATOR LAUTENBAUGH: They settled on trespass. That's all he got. [LB61]

SENATOR COUNCIL: Again, and all they got was a trespass, so I just want to, I mean, I just don't want to, by advancing this, build any false hope that it's going to address those kind of situations if that difficulty still exists in terms of prosecution. But maybe my recollection of the facts of that is inaccurate, but my recollection it was just somebody standing in the yard looking through the window, and the county attorney's conclusion was all he could be charged with was trespass. [LB61]

JOHN FREUDENBERG: If that was a place of seclusion or solitude, I would believe it would be something that could be prosecuted, but like I say, I'm not familiar with the facts. [LB61]

SENATOR COUNCIL: Well, that was what Senator Haar thought, and was advised otherwise when he introduced the bill last year. [LB61]

JOHN FREUDENBERG: And...but... [LB61]

SENATOR ASHFORD: Yeah, that...actually, that's a good...Senator Council brings up a good point. What we might do is just take a look at that, and LaMont can get us the bill. Hold on, just a second. If you could get a bill for John, because I think Brenda makes a good point. I mean, it was clear to us it could not be prosecuted, correct? [LB61]

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SENATOR COUNCIL: No, we couldn't understand why it couldn't be prosecuted (laugh). [LB61]

SENATOR ASHFORD: Right. No, they didn't prosecute. [LB61]

SENATOR COUNCIL: But they didn't prosecute. [LB61]

SENATOR ASHFORD: Right. [LB61]

LaMONT RAINEY: But I don't think it...it wasn't statutory as to why they didn't prosecute. It was that attorney's belief that he couldn't. [LB61]

SENATOR COUNCIL: Prosecute. [LB61]

SENATOR LAUTENBAUGH: I think it had to do with where the viewer was or something... [LB61]

SENATOR COUNCIL: Where the viewer was. Well, that's what I'm saying, and wouldn't that equally apply here? [LB61]

SENATOR LATHROP: It's on a public sidewalk. As long as it's a public sidewalk and not trespassing. He was literally standing on the sidewalk, outside the side window of a house. [LB61]

SENATOR ASHFORD: Okay. [LB61]

SENATOR COUNCIL: But he was nevertheless viewing someone who was in a place of solitude... [LB61]

SENATOR ASHFORD: Right. [LB61]

SENATOR COUNCIL: ...and they were in a state of undress, and they said they couldn't prosecute the individual. I just want...we need to make sure that's not a problem, and, you know, we pass something that appears that we're addressing the magnitude of the issue, and then not have anyone able to prosecute under the provisions. [LB61]

JOHN FREUDENBERG: Absolutely. I believe Senator Heidemann has indicated...his office has indicated to me they truly want to address this issue so. [LB61]

SENATOR ASHFORD: Maybe we just take a look at what that was and then think about it. [LB61]

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JOHN FREUDENBERG: I have no problem doing so. [LB61]

SENATOR ASHFORD: Thanks, John. Any other questions of John? Yes, sir. [LB61]

SENATOR HARR: Thank you, Mr. Chairman. Ms. Robles had a problem with a statute of limitation issue, and other than making this a felony which extends the period of the statute of limitation...to prosecute it? [LB61]

JOHN FREUDENBERG: Well, it extends the statute of limitations by making it a felony, because before...right now, it's an 18-month statute of limitation. By changing it to a felony offense, it becomes a three-year statute of limitation. [LB61]

SENATOR HARR: Exactly. Thank you very much. So my issue is, we're still only at three years. Is there something we can do that each individual viewing of it restarts the clock? Because otherwise, I can take pictures...hold on to it for three years, and then release it. Is there anything...and it's out on the Internet forever. [LB61]

JOHN FREUDENBERG: You know, I have not thought of it from that standpoint, something that's just kind of free flow of information here is the actual act that the distribution could be something that would restart the statute of limitations clock, because once you distribute it, you committed the additional part of the act. But I had not looked into that, so...and that would be something that we could look into. [LB61]

SENATOR ASHFORD: Burke, what is it? Do you have to prove...what are the elements then? Well, I mean, would you have to prove the time? I suppose you would, when it was... [LB61]

SENATOR HARR: Yeah, you have to prove that it occurred within the...yeah, reasonable...within the...well, under current statute, it would be within the last 18 months, and that's the problem we ran into, or she ran into. Now, it's extended to three years, but in the world of the Internet, you can hold on to it for three years and it would appear, as it's written to me, at least, that once that three years expires, it's free domain. And, you know, you're still violated each time. It's now just for a longer period of time, so I'd like to see something in there that we can say each time is down...that image is downloaded, streamlined, whatever, that that's a new violation. It also could nail on...you could really throw someone away for a long time that was doing this, too. [LB61]

SENATOR LATHROP: That's really about the porn statutes, though, isn't it? The things that we did last year about distributing different kinds of... [LB61]

JOHN FREUDENBERG: That's under child pornography. [LB61]

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SENATOR LATHROP: Yeah, that might be where this needs to be in addition to children, people who have been recorded without their permission. [LB61]

JOHN FREUDENBERG: Right. That would be probably where I'd go to look to try to find the language that Senator Harr is talking about. [LB61]

SENATOR HARR: Great. Thank you. [LB61]

SENATOR ASHFORD: Thanks, John. [LB61]

JOHN FREUDENBERG: Thank you. [LB61]

SENATOR ASHFORD: Any other testifiers on this bill? Any opponents? Senator Heidemann, do you wish to wrap up or? [LB61]

SENATOR HEIDEMANN: Just real briefly, Senator Harr and Senator Larson made some very good points. We're willing to work on anything that the committee thinks is important. Hopefully, not getting things too complex, because we would like to deal with this issue, without a doubt. Senator Lautenbaugh, you're right. Technology is getting to be pretty amazing, but at times it can be kind of scary, too. And I think we're going to see more and more of this because of that so, with that, if you have any more questions. [LB61]

SENATOR ASHFORD: Thanks for bringing it to us, Lavon. [LB61]

SENATOR HEIDEMANN: You bet. Thanks. [LB61]

SENATOR ASHFORD: All right. Let's go to Senator Wightman, LB12. And you have LB12 and LB13. [LB12 LB13]

SENATOR WIGHTMAN: They are related bills. [LB12 LB13]

SENATOR ASHFORD: They are related, aren't they? So, do you want to introduce both of those? Would that be...? [LB12 LB13]

SENATOR WIGHTMAN: If that's okay with the committee. [LB12 LB13]

SENATOR ASHFORD: It would be fine with us if you'd do that. [LB12 LB13]

SENATOR WIGHTMAN: Good afternoon, Senator Ashford, members of the Judiciary Committee, good to see you good folks again. It's been since yesterday. For the record, my name is Senator John Wightman spelled J-o-h-n W-i-g-h-t-m-a-n. LB12 is identical to LB853 that I introduced last year at the request of Joanne Pepperl, our Revisor of

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Statutes. LB853 did not become law for reasons known more by you than by me, I guess, so. [LB12 LB13]

SENATOR MCGILL: It's personal (laughter). [LB12 LB13]

SENATOR ASHFORD: And we're not going to divulge them (laugh). [LB12 LB13]

SENATOR WIGHTMAN: (Exhibits 2, 3) I knew you hadn't in the past. LB12 addresses an issue that, it seems to me, must be resolved. The pages have, I think, already handed out a copy of an editorial opinion from the Lincoln Star bearing the headlines, Senators Must Fix Sentencing Law. Obviously, I guess you're not guided necessarily by the editorials in any paper perhaps. LB12 and LB13 were introduced to allow this committee and the Legislature to do just that if they choose to, not only repeal the law, but maybe fix the law. The intent of LB12 is simply to remove the language found unconstitutional by the Nebraska Supreme Court in 2005. For history, in 2002 the Legislature held a special session to address Nebraska capital sentencing scheme in light of the U.S. Supreme Court case, Ring v. Arizona. During the special session, language was adopted to clarify that the current penalty for Class IA felonies, when the death penalty is not utilized, is life imprisonment without parole. Class IA felonies are murder, kidnapping, and murder of an unborn child. Six sections of law were amended during the special session to add the two words "without parole." However, in 2005, the Nebraska Supreme Court, in State v. Conover, struck down the "with parole" language in two of the six sections where it had been added by the Legislature, holding that it was unconstitutional, because it was outside the scope of the Governor's call which related only to Ring v. Arizona. Specifically, the Nebraska Supreme Court held that, "2002 amendments to sections 28-105(1) and 29-2520(1), which insert the phrase 'without parole' after 'life imprisonment' contravene the constitutional directive that the 'Legislature shall enter upon no business except that for which they were called together' in a special session. We therefore conclude that whatever its intent, the Legislature lacked constitutional authority to amend the language of the statutory penalty for a Class IA felony during the 2002 Special Session." LB12 simply strikes the phrase "without parole" in all the sections where it was inserted during the 2002 Special Session, thereby bringing the statutes into compliance with the Nebraska Supreme Court decision. The Nebraska State Bar Association, I believe, has submitted a letter in support of LB12, and I don't think they intend to testify. I would appreciate the committee's support in advancing LB12, and I would be happy to answer any questions. Also, Joanne Pepperl is here if you have any questions of her. Thank you. [LB12 LB13]

SENATOR ASHFORD: Senator Lautenbaugh. [LB12 LB13]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Wightman. So the Supreme Court has not held that we cannot have a sentence of life without possibility of parole. What they've said is the way it was enacted in a special session

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was wrong. [LB12 LB13]

SENATOR WIGHTMAN: Absolutely correct, Senator. [LB12 LB13]

SENATOR LAUTENBAUGH: So this bill could also state we strike it, and we reinstate it. [LB12 LB13]

SENATOR WIGHTMAN: And that's what LB13 does. [LB12 LB13]

SENATOR LAUTENBAUGH: Okay. [LB12 LB13]

SENATOR ASHFORD: Can you go into 13? [LB12 LB13]

SENATOR WIGHTMAN: (Exhibits 4, 5) I would be glad to at this point. I'm still the same testifier, I guess. Spelling is the same. I thought...and I'm not necessarily a strong proponent of LB13. I have brought it. I will certainly be willing to advocate for it, but I thought that perhaps it would be better for this committee, if it at least had before it the bill that would do exactly what you're undoing by LB12. So LB13 proposes to reinstate the language found unconstitutional by the Nebraska Supreme Court in 2005. LB13 provides another public policy option in contrast to LB12 if you just looked at it alone. The facts that lead me to introduce LB13 are the same as for LB12, and I won't go through all of the Ring decision, but as I stated before, the Nebraska Legislature was acting in regard to a call of the Governor to try to fix the problems that we had with the death penalty section and, particularly, that perhaps there was a question as to the legality of the death penalty itself. However, in 2005, the Nebraska Supreme Court, as I said, in State V. Conover held that unconstitutional in two of the sections. They have since taken another little jab at the Legislature during the past summer. LB13 would enact into law in a regular session "without parole" provision in all six sections where it was inserted during the 2002 Special Session. By adopting the "without parole" language in a regular session, it would overcome the decision of the Nebraska Supreme Court in Conover under LB13, the penalty for Class IA felonies when the death penalty is not utilized at life imprisonment without parole. It has been six years since the Conover case was decided or at least five and a fraction, it is time to either amend the law to reflect the decision in the Conover case or adopt the public policy set out in LB13 of the penalty for Class IA felonies or where the death penalty is not utilized is imprisonment without parole. I think maybe you've received an e-mail from Beverly Meis, M-e-i-s, suggesting that LB13 is unconstitutional, and we have at least had the Attorney General's Office look at that this morning. I don't know that you would have anything on it yet, but I'm just pointing it out, so you won't be surprised if you receive an e-mail. The e-mail raises questions about...actually, LB12 and LB13 as to whether it would be found constitutional. You know, it's a fairly well-written letter compared to some that we receive, and so I thought it might be worth at least pointing it out and perhaps you should have an Attorney General's Opinion. The decision had been made

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that a Revisor's bill would not be appropriate for fixing the sentencing law even though it probably falls within the scope of a Revisor's bill. Constitutionality always raises an additional question that isn't there when some law, by its own language, has become no longer valid or useful. Public policy of the state of Nebraska needs to be clearly stated in the statutes, so I would urge the members to take action on either LB12 or LB13 or perhaps both. I think it is time to fix Nebraska's sentencing law, so I would ask that you advance both bills to General File. So I'd be happy to answer any questions you have. [LB12 LB13]

SENATOR ASHFORD: Mike and I did read this editorial where it did say that I promised that the Legislature would deal with this issue next year which is... [LB12 LB13]

SENATOR WIGHTMAN: I thought they maybe put the Chair under the gun a little. That's poor language. [LB12 LB13]

SENATOR ASHFORD: Which they did, but...and I want to... [LB12 LB13]

SENATOR WIGHTMAN: I'll take that back (laughter). [LB12 LB13]

SENATOR ASHFORD: But life imprisonment is life imprisonment unless it's reduced to a term of years, I believe. Is that your understanding, John? I mean, you can't...life imprisonment means life imprisonment. [LB12 LB13]

SENATOR WIGHTMAN: It means life imprisonment, but, obviously, there's room for maneuvering there after the sentence is made. Right. [LB12 LB13]

SENATOR ASHFORD: After by the Board of Pardons or...but only by the Board of Pardons. [LB12 LB13]

SENATOR WIGHTMAN: Right, right. Well, maybe by the Governor, I don't know. [LB12 LB13]

SENATOR ASHFORD: Or the Governor. [LB12 LB13]

SENATOR WIGHTMAN: The Governor can pardon too, but... [LB12 LB13]

SENATOR COUNCIL: It's only by the Board of Pardons? [LB12 LB13]

SENATOR ASHFORD: Only by the Board of Pardons. But help us here, Burke. [LB12 LB13]

SENATOR HARR: If you're sentenced to life in prison, it is...and you just say, life in prison, it is the...your first eligibility of parole right now, if I recall correctly, is the minimal

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of whatever that term is. So, for instance, for a Class IA felony it's life imprisonment, so that would be fine. But if you get a prosecuted... [LB12 LB13]

SENATOR ASHFORD: Well, lesser. [LB12 LB13]

SENATOR HARR: Well, lesser, yeah, but you have to put a bottom number on there, and I can't...how do I... [LB12 LB13]

SENATOR ASHFORD: If the bottom number is life,... [LB12 LB13]

SENATOR HARR: It is life to life...it's life to life, you're okay. But if it's just straight life, I believe you're eligible, and where is the Attorney General when you need him? [LB12 LB13]

SENATOR COUNCIL: You're eligible for parole review, but you're not eligible for parole. [LB12 LB13]

SENATOR HARR: Yeah, parole review in 20 years. [LB12 LB13]

SENATOR ASHFORD: But there cannot be a parole unless... [LB12 LB13]

SENATOR COUNCIL: Yeah, there's no...there cannot be a parole without a commutation. [LB12 LB13]

SENATOR ASHFORD: Unless it's commuted. [LB12 LB13]

SENATOR HARR: Okay. [LB12 LB13]

SENATOR ASHFORD: I think that was our confusion, John. I mean, seriously, it wasn't that we didn't want to do as you suggest we do. I think it was more, why? Because we are, in effect, have it already. But maybe it's just...it was the sentence that was imposed by the district court, was violative. But you still could be sentenced to life imprisonment, and it means life imprisonment, I guess is all I'm saying. I don't know, Brenda, do you have any thought...? [LB12 LB13]

SENATOR COUNCIL: Yeah, but that's...I guess, I mean, that was part of the discussion last year, but there's also, I think, I don't know if you pronounce it Meese (phonetic) or Mice (phonetic), but that's a legal question I've been struggling with for about 2.5 years. And it's not...this writer is not the first to raise this issue. I have a file folder full of similar opinions that...to withhold the possibility of parole for anything other than treason or impeachment is a violation of our Constitution. [LB12 LB13]

SENATOR ASHFORD: Yeah. [LB12 LB13]

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SENATOR WIGHTMAN: And that's found in Article IV, Section 13 of the Nebraska Constitution. [LB12 LB13]

SENATOR COUNCIL: Right, because it says... [LB12 LB13]

SENATOR WIGHTMAN: And it does refer only to those two. Now, there is some language in there about condition by the Legislature or as condition... [LB12 LB13]

SENATOR COUNCIL: It says, as prescribed by law, whatever that term means, and maybe the Attorney General representative...I'm curious as to whether the Attorney General will issue a written Opinion on the LB13, because I've been told in the past when I've asked for an Opinion as to whether a particular piece of legislation is constitutional as drafted, I've been advised that the Attorney General can't render an Opinion...a written Opinion on whether a statute is constitutional, because the Attorney General is then called upon to defend if the constitutionality of the statute is challenged. So I'm curious to know what it is that the Attorney General is going to provide you with. [LB12 LB13]

SENATOR WIGHTMAN: And Senator Council, I've heard the same thing that you're talking about, but I've also seen them render Opinions that it seems to me might be violative of that, so. [LB12 LB13]

SENATOR COUNCIL: Okay. I mean, I'm just laying out, you know, the Catch-22 that we may find ourselves in. [LB12 LB13]

SENATOR ASHFORD: Yeah. [LB12 LB13]

SENATOR WIGHTMAN: Well, maybe they had two rules. I don't know. [LB12 LB13]

SENATOR ASHFORD: Well, and there is the constitutional...did you...is that what you're talking...the constitutional provisions. [LB12 LB13]

SENATOR COUNCIL: Yeah, right. [LB12 LB13]

SENATOR ASHFORD: I don't know. I mean, maybe it's easy, I guess it is. But it does...there are issues, but... [LB12 LB13]

SENATOR WIGHTMAN: Certainly. [LB12 LB13]

SENATOR ASHFORD: ...so those are the things we have to contemplate in here, and why it takes so long to do anything, Senator Wightman. All right, LB12 and LB13. Any testifiers on those issues? Yes, sir. I guess we'll go to the proponents, John. [LB12

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LB13]

WILLIAM WAYNE: (Exhibit 6) I have a copy here. [LB12 LB13]

SENATOR ASHFORD: We'll go ahead, and we'll get that done later. Thanks, Matt. We'll get that done. [LB12 LB13]

WILLIAM WAYNE: Senator Ashford and members of the Judiciary Committee, my name is William Wayne. I am speaking on behalf of myself on this, just because I'm concerned. You've been asked by the Nebraska Supreme Court to reexamine the minimum penalty of life without parole that's now in effect for first-degree murder, a Class IA felony. I would like for you to look specifically at one of the parts of the Class IA felony penalties, that one a felony murder. Felony murder provides any death that occurs during the commission of a felony is first-degree murder, that all participants in the felony, including any who've taken no active part in it, are equally guilty of the homicide, therefore first-degree murder. Even though an individual may have taken no part in it, the fact that he or she was present, allows really for no defense. So felony murder has little resemblance to the crime of murder except its name. It equally punishes all participants regardless of whether the death was intentional, unintended, or accidental. To consider felony murder the same as first-degree murder violates the rule of responsibility for a crime that a homicide was premeditated and deliberate. It requires only that prosecution show the defendant was present or otherwise somewhat involved during the commission of a felony that resulted in death. In some cases, a person actually responsible for the homicide receives a less severe sentence than one who may have been just present. The Constitution of the state of Nebraska, Article I, Section 15, states "All penalties shall be proportioned to the nature of the offense." Treatment of every case of felony murder as a Class IA offense with a mandatory sentence of life without parole doesn't allow the consideration of any individual's actual participation in the crime. I believe the felony murder...rule of felony murder is not only wrong, but it is unconstitutional as well with respect to the Nebraska Constitution. I think it should be removed from the category of a IA felony, and replaced with a rule of policy that lets sentences based on the individual's level of participation that resulted in the death. I have long believed our justice system should promote rehabilitation of those who are convicted of offenses against society if it's at all possible. The principle of rehabilitation guided correctional policy in the United States at one time. For some individuals, I know rehabilitation is not possible, but for many of those whose participation in a crime was minimal and not active, may be worthy of rehabilitation. I suspect that very few prisoners who are likely to work toward personal rehabilitation if they know that eventual release into society is impossible. I would hope that all the inmates who are potentially able to be rehabilitated should have the opportunity to do so, so they can be returned to society where they may, again, become productive and tax-paying citizens. Thank you. [LB12 LB13]

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SENATOR ASHFORD: Thanks, Mr. Wayne. Do you have any questions, anyone? Thank you, sir, and we have your sheet to fill out too. You can do that over at the side by the table. Thank you very much. [LB12 LB13]

WILLIAM WAYNE: Okay, you're welcome. [LB12 LB13]

SENATOR ASHFORD: Okay, any other proponents of either LB12 or LB13? Any opponents? Neutral? Okay, John, do you wish to close? [LB12 LB13]

SENATOR WIGHTMAN: I'll waive. [LB12 LB13]

SENATOR ASHFORD: All right. Thanks. Let's move on to LB88. Senator Christensen. Okay, thanks, Roger. Joanne, thanks for all your work on this. This is going to be longer is the problem. I don't care. Thanks, Mr. Wayne. How many testifiers do we have for LB88? Okay. How about LB100? It's a tie. All right. We'll wait a couple of minutes and then if Mark isn't here, we'll have Colby go ahead. [LB12 LB13]

SENATOR LATHROP: Hello, Senator Christensen. Welcome back. [LB12 LB13]

SENATOR CHRISTENSEN: I feel at home. [LB12 LB13]

SENATOR ASHFORD: What was your name again? We forget quickly, Senator. Go ahead, Mark, LB88. [LB12 LB13]

SENATOR CHRISTENSEN: (Exhibit 7) Thank you. Mr. Chairman, members of the Judiciary Committee, I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB88. LB88 would amend the Concealed Handgun Permit Act to provide for uniform signage and placement of signs when a property owner desires to prohibit a permitholder from carrying a concealed handgun on his or her property as authorized in the Concealed Handgun Permit Act. This is to reduce the confusion, limit the potential of permitholders unintentionally entering a posted place. The bill defines posted conspicuous notice to clarify the term and require the Nebraska State Patrol to design a sign meeting all the specifications in LB88. Any controllers of the property seeking to exercise their current right to prohibit a permitholder from carrying on their premises would be required to use such sign designated by the Nebraska State Patrol and follow all requirements in the bill where the sign shall be placed, to be considered as a posted place under the law. LB88 would codify much of what the Nebraska State Patrol already recommends in their rules and regulations. Specifically, the bill would require the sign to meet the following specifications: the sign shall be at least 11 inches tall, 8.5 inches wide; (2) have a white background containing 5-inch red circle with a slash covering the image of a black handgun; (3) use contrasting black and red font and include the following text: Notice Concealed Handgun Permitholders Carrying Concealed Handguns Are Prohibited In or

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On This Place or Premises. Those in control of this property have prohibited such permitholders from possessing or carrying a concealed handgun on these premises. Posted Pursuant to the Nebraska Revised Statute Section 69-2441. (4) be posted at each entrance to the place or premises between 54 inches and 66 inches above the floor or ground. (5) be posted either on the door of an entrance to the place or premises or within 12 inches on either side of the doorway of an entrance if the place or premises is a building; (6) be posted within 24 inches on either side of each designated motor vehicle, bicycle, pedestrian entrance to the place, premises if the place or premises is not a building; and (7) not be obstructed or altered in any way and if the sign becomes illegible for any reason, become immediately replaced with a legible sign. In discussions with Captain Maaske with the Nebraska State Patrol, she expressed concern about the word "create" on page 3, line 17, might be interpreted that Nebraska State Patrol would be required to make the physical signs for the property owners instead of just designing a uniform signage which would ensure that there would be no fiscal note to the bill. My office has drafted an amendment for your consideration to change "create" to design, clarifying my original intent in the bill. In addition, we drafted another amendment to address a concern from a person in Omaha who observed that many large retail stores or malls may have large entrances that may be up to 30-plus feet wide with multiple doorways. My amendment would require a sign posted on or within 12 inches on either side of every doorway instead of double doors to address this situation. I would be willing to work with the committee to see if there's a better way to address this issue. I believe this is a good bill that is fair to both permitholder and property owners. Thanks for your consideration of LB88, and I'd be willing to answer any questions. [LB88]

SENATOR ASHFORD: Thanks, Mark. Any questions? Senator Lautenbaugh. [LB88]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Senator Christensen, what can happen to a person if they take a concealed weapon into a facility where the owner has decided not to allow them? [LB88]

SENATOR CHRISTENSEN: Well, if they do, they can become a felon immediately, no longer have a license, they could be thrown in jail. A number of things could happen to them, and it would be a very unfortunate incident if that ever did happen to someone. [LB88]

SENATOR LAUTENBAUGH: So this...the concern you're trying to address is you want to make sure people have adequate notice in advance to avoid that circumstance. [LB88]

SENATOR CHRISTENSEN: That's correct, because right now, because of not designing it correctly in the bill originally, it could be on the ground level; it could be on top, on the side. You know, it could be faded, you know. I also...just as an example, just made what one might look like, and, you know, it's up to what the State Patrol would

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want to design, but I just...as I read the rules on it, I just made one that would be a possibility that could be used with the wording on it that I said. [LB88]

SENATOR LAUTENBAUGH: Have you ever visited the Oakview Mall in Omaha? [LB88]

SENATOR CHRISTENSEN: The what? [LB88]

SENATOR LAUTENBAUGH: Oakview Mall in Omaha. [LB88]

SENATOR CHRISTENSEN: Yes. [LB88]

SENATOR LAUTENBAUGH: Do you know how far across the entrances are, say on the Dillard's side? [LB88]

SENATOR CHRISTENSEN: I do not. [LB88]

SENATOR LAUTENBAUGH: Do you know how many doors there are? [LB88]

SENATOR CHRISTENSEN: No. [LB88]

SENATOR LAUTENBAUGH: What you're concerned, though, is if this were placed at the far end of one door, and there's 30 feet of doors... [LB88]

SENATOR CHRISTENSEN: Correct. [LB88]

SENATOR LAUTENBAUGH: ...a person coming in that other door isn't going to see this. [LB88]

SENATOR CHRISTENSEN: We could even have the same problem, Senator, if there's people going through every door, and it's on every other one, you know. That is a point I bring up, but at the same time, I hate to force owners to have to put one on every door, but if the committee sees fit, I would understand. [LB88]

SENATOR LAUTENBAUGH: Thank you. [LB88]

SENATOR MCGILL: I just have to chime in, but I don't want to see this on every single door going into the mall. Is that really necessary? Or even something...if we're asking all businesses that don't want to have handguns, why does it have to look so obvious? And if a handgun owner knows what sign to look for, even if it's uniform, why can't it be smaller, be something that can be more beautified to a building? But if it's exactly what they're looking for, if they know, okay, we're supposed to be looking for a taupe sign that says, no handguns allowed. I mean, because this to me isn't something that I want to see on half the buildings in Lincoln, just the message it sends to the community and

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seeing guns everywhere. It's not something that I personally want to see, and I thought I would share that right now. [LB88]

SENATOR CHRISTENSEN: No. I just had to put something in the language. I'll work with the committee on it. I'm not trying to... [LB88]

SENATOR MCGILL: Okay. [LB88]

SENATOR CHRISTENSEN: That was my concern with...originally when I wrote it, I just put a sign on there, but if there's that many doors, how do you do it? Because some stores have extremely beautiful doors... [LB88]

SENATOR MCGILL: Yeah, and extremely beautiful outsides, you know that... [LB88]

SENATOR CHRISTENSEN: ...and if it could be put on the side, it would look much nicer. But if you've got eight doors open which I could name a business in Omaha that way,... [LB88]

SENATOR MCGILL: Yeah. [LB88]

SENATOR CHRISTENSEN: People walking in and out. How can you hold somebody to a felony for going in the door one when it was posted on the right side of door eight? And so that was my concern. [LB88]

SENATOR MCGILL: And it seems like most department stores are allowing concealed carry, so I would think to an extent it's the burden of the person with concealed carry to be looking closely and to know those things because most retailers don't allow these, so that's just my thoughts. You don't need to respond to that. Just my thoughts. [LB88]

SENATOR COUNCIL: Yeah, that's what I'm saying. [LB88]

SENATOR CHRISTENSEN: And I'll be glad to work with you if you have thoughts on it, because like I said, it's...I figure it's got to be noticeable enough, and that was my thought. [LB88]

SENATOR ASHFORD: All right. Let's go with Senator Lathrop, then Senator Larson, and then Senator Harr and then Senator Council. Do we remember what I just said? (Laugh) [LB88]

SENATOR LATHROP: Do you know anybody that's been convicted? [LB88]

SENATOR CHRISTENSEN: Yes. You'll have somebody following me up today that will share their story. [LB88]

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SENATOR LATHROP: That was convicted of a felony? [LB88]

SENATOR ASHFORD: Yes. [LB88]

SENATOR LATHROP: For carrying a gun in the... [LB88]

SENATOR CHRISTENSEN: Was put in jail and is... [LB88]

SENATOR LATHROP: Convicted? [LB88]

SENATOR CHRISTENSEN: I believe so. You can ask him when he comes up, so it is concerning. [LB88]

SENATOR LATHROP: Okay. We'll look forward to hearing what he has to say. [LB88]

SENATOR ASHFORD: Maybe we should wait until...are there some other testifiers behind you? [LB88]

SENATOR CHRISTENSEN: Yes. [LB88]

SENATOR ASHFORD: Does any...go ahead, Senator Larson. [LB88]

SENATOR LARSON: Yeah, just real quick. So supposing we do pass this law as a Legislature and a business chooses not to put up one of these codified signs, would an individual be able to be prosecuted for a felony at that point if a business chooses not to put up one of the signs that are prescribed? Again, I'm sorry for demonstrating my ignorance of the law, but...if they're not...if it isn't one of these signs, will that person be able to be prosecuted for a felony if a business puts up its own sign with toast on it or whatever? [LB88]

SENATOR CHRISTENSEN: Well, I think just to make it...without rereading this to be positive, I believe they just couldn't hold you to not carrying the gun in if it didn't meet the standard. [LB88]

SENATOR LARSON: Okay. [LB88]

SENATOR CHRISTENSEN: And that's why I wanted something uniform, so everybody knows what to look at and be better for everyone. [LB88]

SENATOR LARSON: Thank you. [LB88]

SENATOR ASHFORD: Senator Harr next. [LB88]

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SENATOR HARR: Thank you, Mr. Chairman. Senator, I guess I have a question. Generally, I consider people who have carry conceal weapons to be responsible citizens. Would you agree with me? [LB88]

SENATOR CHRISTENSEN: Yes. [LB88]

SENATOR HARR: And I am not a big proponent of government telling me how I have to do everything. I'm a big proponent of private property rights. And I guess my question is, this seems to go against my policy and ideologies, because it says...it's trying to tell private property what they can and can't do on their own property. Could you address that issue? [LB88]

SENATOR CHRISTENSEN: Well, I guess if we would...the other angle, I guess I would look at if we didn't want to go this direction is, reduce the severity of the penalty, because the way it is right now in statute, it really criminalizes an innocent person that's walking in, because you take the multiple door situation. You miss it, get caught. There's a gentleman behind me here will speak...that is equally bad. [LB88]

SENATOR HARR: You know, I guess, you know, that doesn't really protect the private property owner by reducing the penalty of their ability to make a decision on their property. That's my problem with this. I like to have private property owners be able to make decisions on their own property. Lowering the penalty doesn't address that issue. It addresses the person who violates that private property owner's interest or desire. [LB88]

SENATOR CHRISTENSEN: Right. [LB88]

SENATOR HARR: And that's the exact opposite of what I'm looking to do here. [LB88]

SENATOR CHRISTENSEN: Well, I understand that, but how can you hold somebody to a standard if they don't know (1) where to look, or (2) have the ability to know they can't be there with it? [LB88]

SENATOR HARR: Well, and, again, that's where...and we have reasonableness standards. We have county attorneys who are elected officials who can help determine that. We have police officers to investigate. That's why those exist. This, to me, seems to be overly burdensome to a private property owner is my point. [LB88]

SENATOR COUNCIL: Mr. Chairman, is it my turn? [LB88]

SENATOR ASHFORD: Yes, it is. [LB88]

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SENATOR COUNCIL: Thank you. Thank you, Senator Christensen. [LB88]

SENATOR ASHFORD: Well, I wasn't sure who raised their hand first. It was... [LB88]

SENATOR COUNCIL: No, I just...I just wondered if... [LB88]

SENATOR ASHFORD: It was a tie, I think, basically. [LB88]

SENATOR COUNCIL: Okay. And I'm following up on Senator Harr, because the real problem I have with this is, it's directed to concealed handgun permitholders. Is it? Do certain people have a right to carry a gun that's not concealed? [LB88]

SENATOR CHRISTENSEN: Sure. [LB88]

SENATOR COUNCIL: Okay. So why do I, as a property owner, have to send a special message out to people who have a carry conceal permit when I'm telling you, I don't want a gun on my property. Why do I have to have a special sign for carry conceal permitholders if my intent is, I don't want people carrying guns on my property? [LB88]

SENATOR CHRISTENSEN: Well, how do you present the...how do you tell somebody they can't come in your business if you don't have a sign, though? [LB88]

SENATOR COUNCIL: Yeah, but notice, no guns whether you got a permit to carry a concealed, whether you got it in a holster outside your...you don't carry a gun, and this statute says, I have to make a special sign for people who have a carry conceal permit even if, in the operation of my business, I don't want anybody other than law enforcement carrying a gun on my property. Why do I have to go through all this? Why can't I just say, notice--guns prohibited? [LB88]

SENATOR CHRISTENSEN: I don't have a problem if it's guns prohibited as long as we have the statutes in line for that. I just want everybody to be protected whether it's a business owner or the person with the permit, that neither one is getting themselves in the position they shouldn't be legally. [LB88]

SENATOR COUNCIL: Okay. Well, and I hope you appreciate my point about...I mean, this is in the carry conceal section, and it's requiring private property owners to make special signage for people who have a permit to carry their weapon concealed even though that private property owner may not want anybody to carry a weapon. But you're telling me I have to put this kind of signage up just to warn people who have a carry conceal permit. I want to tell anybody who's carrying a weapon that they're not allowed on my property carrying that weapon, and I think this goes too far. And I'll wait till the person comes forward. If he got charged and convicted with a felony, he needs to sue the county, because it says that a violation...a permitholder who violates this subsection

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is guilty of a Class III misdemeanor for the first violation, and a Class I misdemeanor for any second or subsequent. So I'd like to know what county attorney charged this person with a felony. That's all I have. [LB88]

SENATOR ASHFORD: Thank you, Senator Council. Senator Coash is next. [LB88]

SENATOR COASH: All right. I'll be brief. Thank you. Senator Christensen, if I'm a business owner, a retailer and I don't want guns, concealed or not, in my business, right now I got to make up my own sign on my own computer and post that? [LB88]

SENATOR CHRISTENSEN: Yeah, it's just got to be posted, yes. [LB88]

SENATOR COASH: I got to post it, but I got to make my own up? [LB88]

SENATOR CHRISTENSEN: The State Patrol has a recommendation but there's, you know,... [LB88]

SENATOR COASH: But I got to get on my computer, and I've got to use my clip art, and I've got to come up with something that... [LB88]

SENATOR CHRISTENSEN: Correct. [LB88]

SENATOR COASH: Okay. So, and I was reading the fiscal note that says what the State Patrol would do which was they would make it uniform, put it on their site, so that if I'm that business owner, I can go to the State Patrol's Web site and click and print out a uniform. [LB88]

SENATOR CHRISTENSEN: Right. [LB88]

SENATOR COASH: So, in essence, I think I know what you're trying to get at. It could be...just to make it a little bit easier for a retailer, because then they don't have to go out and try to make up their own. They can say...they can just go to the State Patrol, and they can take care of it. [LB88]

SENATOR CHRISTENSEN: Right. [LB88]

SENATOR COASH: The State Patrol has already done the work. They've done what you've directed them, and we could probably...maybe taupe is a better color... [LB88]

SENATOR CHRISTENSEN: Right. Correct, but with... [LB88]

SENATOR COASH: We can do that in a committee (laugh), but that's what you're trying to get at, right, is a...? [LB88]

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SENATOR CHRISTENSEN: Yeah, exactly. [LB88]

SENATOR COASH: Okay. I get it. [LB88]

SENATOR ASHFORD: Right. Great. Yes, Senator Harr and then Senator McGill and then... [LB88]

SENATOR HARR: Just quickly. Nothing stops the State Patrol from doing that right now--posting something on their Internet site that...just, this right here. Nothing stops them from doing that right now. If we want to make it easier for private businesses (inaudible). That's all. [LB88]

SENATOR ASHFORD: Senator McGill. [LB88]

SENATOR MCGILL: And I would just say that if we move forward with something like this, there are going to be a lot of private property owners that don't want something this gaudy on the outside of their brand new medical facility or whatever it might be. So maybe different color options or something. I'm just thinking that so many people go through so much effort to make sure their fronts of their buildings look nice and approachable and comforting, and this isn't going to fly everywhere, I don't think. [LB88]

SENATOR CHRISTENSEN: You know, typically, what you look at, you see red, you see stop... [LB88]

SENATOR MCGILL: And if it's just a piece of paper you print out to put on the outside of the building, the minute it rains, it's gone. And so that property owner is going to have to put some money into at least laminating it, but, again, the beautification end of it, which is important to business owners, you know. Yeah. [LB88]

SENATOR CHRISTENSEN: Yes. I don't disagree there. I'm just...typically red is a stop and... [LB88]

SENATOR MCGILL: But if it is something that they know to look for, a little plaque that says it. I'm assuming all concealed carry owners, if we had a uniform sign would know what that sign looks like and where to find it. There's no reason it couldn't then be a small little thing... [LB88]

SENATOR CHRISTENSEN: Sure. [LB88]

SENATOR MCGILL: ...that says that, you know, guns aren't allowed. [LB88]

SENATOR CHRISTENSEN: If you go to every door, you could do a 4x6 or 3x5 or

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whatever you wanted to do. But it's got to be in a regular location, and that's the idea here is to get a uniform spot, and if you want to go every entrance, then you can go a lot smaller. I'm flexible there. I just don't want to see either side get in trouble. [LB88]

SENATOR MCGILL: Um-hum. Okay. [LB88]

SENATOR ASHFORD: I think that, yeah, Senator... [LB88]

SENATOR HARR: No, no, no. I don't have any more questions. [LB88]

SENATOR ASHFORD: Mark, I think you're clear on your intent, so let's go to the proponents. Proponents for Senator Christensen's bill. How many proponents again? I'm sorry. Okay. Come up and did you sign? Go ahead. That's fine. Go ahead and sit down; you can do it later. Matt, would you...? [LB88]

R.A. MANARD: Hi. I don't know your titles except senators. Hi. My name is R.A. Manard, a/k/a Alan or the Computer Cowboy as my business name is. I have two points that I want to get across that made me come here today. [LB88]

SENATOR ASHFORD: Okay. [LB88]

R.A. MANARD: Number one, I'm kind of ashamed because I never really knew what you guys do here or that there really was such important language to laws and all this stuff. I went through the CCW class. I listened to what they said intently, soaked it all in, read what they thought the law meant, but didn't go seek out the actual verbiage that was passed that made it a law that made...that was ultimately so important to me. I'm sorry. I didn't know about a person should be active or a member of anything. I wasn't a member of NRA or any firearms association, nothing. Anyway, then I got arrested. My life changed immediately. The first time...not the first time...I did get arrested one other time for a DUI like 25 years ago or so. I knew what I was doing was wrong. I did it anyway. I saw a buddy off to college. I had a few too many. I figured as long as I wasn't driving erratically, I made excuses. I got caught, taillight out, went to jail. Holding cell overnight, signed myself out in the morning. They took my right to drive away for a year, and looking back on it, that was appropriate. I was doing something wrong; I knew it; I needed to be stopped doing that. I changed the way I live. Now what happened is, I got arrested, not put in a holding cell...put in actual jail, wasn't able to sign myself out, had to be bailed out, and originally charged with a Class I misdemeanor up to three years in prison. I decided...and also with the register of firearm, even though the Attorney General said that they shouldn't do that, and they said they wouldn't. They still charged me with that which then they took off, but then they lowered it to a Class III misdemeanor that they're charging me with now which brings me to the second part. I went to a place that was prohibited. I didn't see the sign. Somebody held the door open for me. It could have been on the door there. Maybe the reflection stopped me from

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seeing--I don't know. My understanding was, I should see if there was a sign. If I didn't see one, I was okay. I asked, is there a certain sign I look for? No. Would it be a certain size? No. Would it be a certain location? No. Would it be a certain color? No. Would it have a picture of a gun on it? No, some do, some don't. Like okay, well, how do I know then? Well, it will just be real obvious. If it isn't, then no problem, you didn't do anything wrong. I don't know if that's true, because of what I just said, and, apparently, the judge is going to decide what's to be done with me now based on whatever he or she thinks is reasonable at the time. Anyway, I just wanted to draw a distinction between knowing I did something wrong and not knowing I did something wrong and trying to do the right effort and good meaning thing, and get a license when I didn't even really need to for my business practices. And I guess that was my experience. [LB88]

SENATOR ASHFORD: Well, I think you make a good distinction. I appreciate you commenting on that. Do we have any questions of R.A.? This was a private business, R.A.? You don't have to go into it in any depth. But this was a private business? [LB88]

R.A. MANARD: Yes, Computer Cowboy. I go to places and fix a computer. You call me; I'll come out. [LB88]

SENATOR ASHFORD: Okay. And I don't want to ask any more questions, because apparently, this is a pending matter, so we'll just let it go. Thanks for your comments. [LB88]

R.A. MENARD: Sure. Thank you for hearing me. [LB88]

SENATOR ASHFORD: Okay. Next proponent. Good afternoon. Welcome back. [LB88]

ANDREAS ALLEN: (Exhibit 8) Yep, good to see you again. So seldom we get to talk (laugh). I'm Andy Allen. Last name is A-I-I-e-n. I'm president of the Nebraska Firearms Owners Association. Senator Ashford, Judiciary Committee, on behalf of the membership of the Nebraska Firearms Owners Association, we wish to voice our support for LB88. When preparing for my testimony today, I thought about speaking of the history of the discussion amongst concealed handgun permitholders from questioning, what does conspicuous mean to discussions on what is an appropriate sign, and what is fair to property owners? We want to take the time to recognize property owners' rights to discussions with the State Patrol on the meaning of conspicuous notice. Further, researching how other states have handled this question and then approaching our law enforcement professionals to see if they would support a bill like this. They took the idea and ran with it, and that's how we're here today. But, at the same time, I have heard recently a whole lot of concerns about businesses on posting the sign, primarily dealing with the costs of hanging these signs. Now, first I'm going to take and point out that this sign is not a requirement. It is an option that is available to the business owners that wish to opt out of having people with concealed

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carry permits carry on their property. Then when we talk about the cost of the sign, this is the same sign that the State Patrol has had available since the Concealed Carry Act took place. It's been available on their Web site for free download to anybody that wants to do so. Okay? We're not coming up with some new something. We took in and go hey, we've got something that is acceptable; it's low cost. The cost of printing one of those out, if you've got a color laser printer...I'm in the computer industry...12 cents apiece. I did some research this morning. I talked to a couple of professional sign companies. The cost of having a professional sign company make these, ordering only a hundred, okay, I'm figuring, small businesses--you got friends. You'll share them around, so forth, divide up the costs. There's lots of organizations. Ordering only a hundred of plastic laminated signs that are adhesive to stick to doors, the cost is just a couple of cents over \$2 apiece. If you wanted a more permanent plastic sign that could be hung up, mounted on a pole, whatever, it goes up to about \$4 apiece. This is not a high amount of money for a business to spend to do this. Kind of jumping ahead here, that need to point out that there's already an organization going around, at least in Omaha and possibly also here in Lincoln, giving out a type of sign to businesses. In fact, I've heard that they've told businesses, you have to post this. It's required that your business puts one of these up, not if you want to opt out of concealed guns, but it's required in law that you have to have one of these. It's about a 3-inch circle with the gun on a clear background that's put on a tinted glass door, down in the lower corner, sometimes on the entryway, sometimes on a different window all over the place, and it can't be seen. And... [LB88]

SENATOR ASHFORD: Andy, you know, why don't we just go...because I think there may be some questions? [LB88]

ANDREAS ALLEN: Yeah, that's... [LB88]

SENATOR ASHFORD: Do we have any questions of Andy? Yes, Senator Lautenbaugh. [LB88]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, sir. So if you violate this section currently and go somewhere where it's posted that you're not supposed to have a gun, what can happen to your concealed carry permit, if convicted? [LB88]

ANDREAS ALLEN: Well, in the example of the person that has...without being convicted, his concealed carry permit has been revoked. [LB88]

SENATOR LAUTENBAUGH: By whom? [LB88]

ANDREAS ALLEN: The Nebraska State Patrol. [LB88]

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SENATOR LAUTENBAUGH: Just because the charges are pending on this? [LB88]

ANDREAS ALLEN: Just because the charges are pending on this. He is, of course, has available to him hearings to see if that should be overturned. Unfortunately, there's time limits there. His case has been pending already for about six, eight months, I believe. I don't know his exact timing, but it sounds like it's going to be several more months before it's heard, and his actual appeal time to ask for an administrative appeal is past already. So basically for him, if he is able to take and get found innocent of these charges, he's then going to have to file another court case in district court to try and get his permit back. [LB88]

SENATOR ASHFORD: That seems terribly odd (laugh), but I...maybe the State Patrol has an answer for that. I'm not disputing your comment, Andy. I just...that just seems incredible. [LB88]

ANDREAS ALLEN: It's...um-hum. [LB88]

SENATOR ASHFORD: Yeah. [LB88]

SENATOR HARR: Thanks. And ALRs are kind of like that too, so. Just a quick question. What organization is handing out those little stickers that you speak of? [LB88]

ANDREAS ALLEN: I have been asking around, and the business owners that I've talked to have told me about it. They've said, well, gee, they don't...they forgot what the name of the organization was. There was a guy that showed up here, had this little 3-inch and telling them to put it on their door to stop concealed carry permit holders from carrying guns into their... [LB88]

SENATOR HARR: All right. [LB88]

ANDREAS ALLEN: You know, when I did a check, the cost of a sticker that size like they're handing out, if you're...you know, it's about a dollar for a sign that meets these standards. At the same quantity of getting just a hundred of those little 3-inch stickers like they got, the cost of getting those made is about 85 cents apiece. So cost shouldn't be a factor. I mean, there's going to be people going around, giving them out free, apparently (laugh). [LB88]

SENATOR ASHFORD: Senator McGill. [LB88]

SENATOR MCGILL: What happens if a business that doesn't want concealed handguns in there doesn't post this uniform sign? [LB88]

ANDREAS ALLEN: The business, if they do not post the uniform sign,... [LB88]

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SENATOR MCGILL: They might have another sign up still, but not the uniform. [LB88]

ANDREAS ALLEN: They may have another sign, something else. As this is written, that other sign would not automatically make the person in violation of the ordinance. If, though, say that person's gun became visible for some reason, store management or store representation, whoever, or property owner representation, is able to ask the person to leave the facility and say, you probably didn't see our sign, because it's not the standard. We don't want people carrying weapons in our business. That person then, according to how the statute is written now, has to immediately leave. If... [LB88]

SENATOR ASHFORD: And you don't see a problem with that, do you? I mean, this is about... [LB88]

ANDREAS ALLEN: I do not. I support a property owner's rights. [LB88]

SENATOR ASHFORD: ...this...right, and I think it. [LB88]

ANDREAS ALLEN: You have the right to say what happens on your... [LB88]

SENATOR ASHFORD: Right, right, as long...just so we understand that, because I think Senator Harr made that point earlier. What we're talking about is prosecution of a case such as R.A.'s. We're not talking about private property rights being somehow impacted adversely here, so... [LB88]

ANDREAS ALLEN: I doubt, and tied to that...and this kind of goes to Senator Council's questions that she had a few minutes ago, on the sign. Why should there be a separate sign for concealed carry people, and the guy that says, I don't want any gun on my property? Because right now in our statutes, if I'm an open carrier...I don't have a concealed carry permit, I'm just a guy carrying a gun, and I'm carrying it on my hip like a cowboy (laugh), but, you know, the picture that a lot of people want to paint of gun owners. Okay? I go waltzing into a store. Right now, whether there's a sign on that door or whatever, I have violated no law. [LB88]

SENATOR ASHFORD: Right. But... [LB88]

ANDREAS ALLEN: If the owner of that business asks me to leave, and I decide not to, I'm charged with a misdemeanor trespassing is the most that I can be charged with. [LB88]

SENATOR ASHFORD: And that... [LB88]

ANDREAS ALLEN: It's not a gun charge. It's a whole lot lower penalty and so forth.

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[LB88]

SENATOR ASHFORD: And that's like any sort of behavior of someone that...I'm sorry, Senator Council, go ahead. [LB88]

SENATOR COUNCIL: Yeah. Can I respond? And if a responsible carry conceal permitholder saw this sign posted, what would they think? [LB88]

ANDREAS ALLEN: That sign right now, most concealed carry permitholders would sit there and go, I'm guessing that I'm not supposed to conceal carry into this place. Most people that open carry actually would probably ignore it, because there's nothing in the statute that says that they can't (laugh). [LB88]

SENATOR COUNCIL: Okay. Now, so then what you're saying to me is the revision that needs to be made is to impose penalties for people who are openly carrying weapons who ignore a conspicuous notice that the private property owner doesn't want guns on their premises. That's the answer. [LB88]

ANDREAS ALLEN: Actually, now we're taking and getting into, you know, we're dealing with court decisions that talk about individual rights and the right to keep and bear arms. And in this state, we have never had any argument over, hey, we're not violating your rights by placing restrictions upon concealed carry holders, because you are still open to. So now we're talking about restricting somebody's civil rights. [LB88]

SENATOR COUNCIL: Yeah, but these are my private property rights. [LB88]

ANDREAS ALLEN: Okay. So we're...yes, we've got to balance rights. And that's a tough discussion to have, and I don't think now is the time to have it (laugh). [LB88]

SENATOR ASHFORD: Well, and we will have it, Andy, and, you know, we'll have it again this year. And I look forward to it, because these conversations are important to all citizens, and I appreciate you coming. Thanks very much. Next proponent. Do we have any opponents to this bill? Okay. [LB88]

WESLEY DICKINSON: (Exhibit 9) Good afternoon, Senators. My name is Wesley Dickinson, and first, just want to thank everyone for giving me the opportunity to have my thoughts and position heard here. I'm fairly new to Nebraska. I moved here from Colorado last year, and after moving in, I started noticing a number of different signs prohibiting concealed carry weapons. And Colorado didn't have any of that, so it was new to me, and I thought, well, that's interesting. Let me pull out the statutes and see what they say. And I was kind of surprised by them as I started reading through. So what I did was I went into the field and did some field work and did some research, and I wrote a couple of articles and published them on-line. You have copies of them right

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now that have color pictures showing some variety of the different signs that are out there. And two things really came to mind here that I was concerned about, one being that there was no uniform standard sign. Some of the signs that I ran across were similar to and modeled on the State Patrol's downloadable PDF example, the one that was passed around, and the one that Andy also talked about. But some of them were just 2 inches by 3 inches, and had small text on them. Others, there's one in there that looks like it's 4 inches perhaps, and it's got a no smoking sign on it, and at the very bottom of that sign, it says, and no concealed weapons. Well, if you're not a smoker...I looked at that sign at first and didn't think anything of it until I looked at it very closely. So that was something that came to my attention. The other one was that it wasn't required to be posted at all entrances. There were buildings, and we're not talking multiple doors on the same side of a building, but multiple entrances on different sides of the building where some entrances would be posted; others would not be. So it was possible for you to enter the private business that was prohibiting concealed carry and not even realize, because you walked through a door that wasn't marked. And most concealed carry owners that I know are generally law-abiding citizens. You have to be for the lengthy and thorough background check you go through, fingerprinting and such. So what does this all matter? We talked about it with the previous people that testified, and first, I want to establish that these signs,...these signs only apply to concealed carry permit holders as Senator Council mentioned. They don't apply to criminals, (1) because criminals can't get a concealed carry permit because they can't pass a background check; and (2) because criminals carry wherever they want. By definition, criminals break the law. Putting up a sign isn't going to stop them. So the charge, which we've gone back and forth with, is a misdemeanor charge which you think, big deal, but it's a firearms charge. And because it's a firearms charge, your concealed carry permit is revoked for a period of ten years, so if you walked through a door that wasn't posted, but another side of the building was posted, you could be in violation. And depending on the prosecutor, you could lose your concealed carry permit for a period of ten years when there was no sign on that door. We have signs and posting frequencies for other laws, things like speed limits, right? You get onto a highway, and whenever the speed limit changes, there's a recognizable standard sign for the speed limit. Whenever you come on the entrance ramp, there's always the sign that says, this is what the speed limit is here. What if you are pulled over and given a ticket on a highway? And there was a sign out there, but it was a 4-inch by 4-inch sign that was posted on the side or perhaps it was posted on the left side. That's not fair, and that's not just. I think it's similar with... [LB88]

SENATOR ASHFORD: Wesley, let me ask you this. We're going to move on, but... [LB88]

WESLEY DICKINSON: Okay. I'm... [LB88]

SENATOR ASHFORD: ...I think you've made your point, and I'm not trying to cut you

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off, but we want to move on here. But... [LB88]

WESLEY DICKINSON: Absolutely. [LB88]

SENATOR ASHFORD: ...your point is that, and you've shown us here a number of inconsistent signs, and that your concern is that if we're going to charge somebody with carrying a concealed weapon in a prohibitive place or whatever the definition of the misdemeanor charge is, we want to make sure they have adequate notice. Is that...and that it be consistent. [LB88]

WESLEY DICKINSON: Well, exactly. This isn't about being a firearms advocate or firearms prohibitionist. This is about whether you believe in just laws. [LB88]

SENATOR ASHFORD: You're talking about someone being prosecuted for something they don't know what it is that they're... [LB88]

WESLEY DICKINSON: Exactly. [LB88]

SENATOR ASHFORD: I get it. Okay. Thanks. Any questions of Wesley? Seeing none, thanks, sir. [LB88]

WESLEY DICKINSON: Thank you. [LB88]

SENATOR ASHFORD: Next testifier. How you doing? [LB88]

ROD MOELLER: Good. Good afternoon. My name is Rod Moeller, R-o-d M-o-e-l-l-e-r. I'm speaking in support of this bill. I am a concealed handgun permitholder. Like other permitholders I know, I take my responsibility as a permitholder seriously. When I carry, I play close attention to any signs that may be posted wherever I travel whether I'm carrying at that time or not. Good-intentioned, law-abiding citizens should know when they are and when they are not in compliance with the law. That should not be difficult. This past summer I attended a conference in Omaha. This conference took place at a hotel downtown. I parked on the street nearby, walked to the front entrance. Upon entering the front entrance, I paused to look around the entryway for any signs as that has become a standard practice whether I'm carrying at that time or not. There were no signs. At the end of the day, I was walking out of the hotel with some other attendees. They had parked in the attached parking garage, so we walked out through a different entrance than I had come in. The sliding glass doors opened and closed in front of us prior to exiting. It was then that I noticed two things. First, I noticed that those signs...I noticed there were signs posted that conceal carry was prohibited. Second, I noticed that those signs were not visible when the automatic doors were in the open position, being visually blocked by a pillar. It was concerning to me to find out that I would have been in violation all day had I been carrying even though I am careful to look for those

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signs. I even went back to the front entrance to check again. There were no signs posted at that entrance. I am concerned because I have heard about a current pending case in Omaha, which apparently that person came to speak today, and because the penalties for noncompliance is too high for it to not be obvious. To see that the Nebraska State Patrol, the Nebraska Attorney General's Office, and the Nebraska Legislature is working together to bring clarification to the requirements while maintaining the private property rights of business owners is a sign of good governance at work. I commend those involved in drafting and presenting this legislation. [LB88]

SENATOR ASHFORD: Thanks. Any questions of Rod? Thanks, Rod. [LB88]

ROD MOELLER: Thank you. [LB88]

SENATOR ASHFORD: Appreciate it. Mark, do you wish to...I believe that's all. Are there any other testifiers? I don't see any. Go ahead. [LB88]

SENATOR CHRISTENSEN: Mr. Chairman, fellow senators, thank you for your opportunity to come here today and bring forth what I believe is a discrepancy, needs adjusted. I apologize for being off on the felony deal. I just met him briefly, and what misled me there is when he said he had to lose rights to the gun. I had forgotten the part that if any gun infraction took that away, and that's my fault there. There's several other states have this from Texas and Missouri, and the others, and the size of that sign basically is what the State Patrol recommends right now. We tried to make it real close to the recommendation. We changed it with the language to that we were asking for in this bill. So, that's all I had. I appreciate your time and like to work with you if you think there needs some tweaks and like to be able to present this. [LB88]

SENATOR ASHFORD: Yes, Senator McGill. [LB88]

SENATOR MCGILL: I just think something as simple as like a no smoking sign...yes, but uniform placement either by the handle of the door or whatever. I mean, because if you're learning...if there's one sign, and you're going to take your concealed carry class, you're going to learn what that one sign looks like, so it could be something simple if that's the only one you're looking for. So that would be my feedback when it comes to this. [LB88]

SENATOR ASHFORD: Thank you, Senator McGill. Senator Lautenbaugh. [LB88]

SENATOR LAUTENBAUGH: Thank you for bringing this, Senator Christensen. I would agree that the sign could be that simple if the penalty were as...were equivalent to the violation of the smoking ban. I understand exactly what you're doing here. You're trying to look at the severity of what can happen if you run afoul of a posted sign when you don't even know it's there. And I sat here, half ready to get out of my seat and testify,

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because I know of a case where a friend of mine in Omaha has a concealed permit. He went to a car wash. He paid his money; he got in the line; he got...and you can't leave the line. He gets all the way to the entrance to the physical car wash, and there's a sign up there that says, concealed carry prohibited. Well, what do you do? Do you get out in the car wash? Do you try to back up over the person behind you? And what happens? And it's very easy to say that, well, has he been prosecuted? Well, he wasn't caught, so he wasn't prosecuted, obviously. But in the area of guns, sometimes I have a problem trusting that rationality will be brought to bear once a possible criminal violation is found. I've even had to introduce a bill this session dealing with something I consider to be irrational and violative of the current law that's being done by the Omaha Police Department regularly. We had this same discussion last year about perhaps us passing a law and thinking we have an understanding how it's going to be interpreted, and then it was interpreted differently, and we had to come back. So while no one...I don't think I take a back seat to anyone on property rights. I also understand that there's a tension here, and if the property owner wants to ban guns, they can ask someone to leave if there's a violation, and that's a trespassing charge. But the severity of the consequence to a conceal carry permit person for violating this law means we do need to have something readily conspicuous before these severe sanctions for someone's right to bear arms should come into being. So, I applaud you for bringing this, because I understand exactly what you're getting at, and it's a problem. [LB88]

SENATOR ASHFORD: Senator McGill. [LB88]

SENATOR MCGILL: And I would just say that if you've taken the class, and you can have the responsibility of bringing a deadly weapon, regardless of how responsible you are, you're giving individuals the right to bring a deadly weapon into an establishment. If we say by law that these signs should be posted next to a handle on a door--or I mean the car wash is a different situation perhaps that we need to figure out--then they should be able to see if the sign is by...that the little sign like this is by the handle of the door if we, by law, say that. We've entrusted them with the responsibility of taking a gun, a deadly weapon, into an establishment. We should be able to trust them to identify a little sign if it's uniformly placed in a particular location by a handle. [LB88]

SENATOR LAUTENBAUGH: And I would agree that maybe we don't charge the State Patrol of being in charge of esthetics and design (laughter) and color schemes and what not, you know. I don't think that's what we're about here, but I agree. I mean, some sort of standardization just so everyone knows the rules. [LB88]

SENATOR MCGILL: Yeah, there's a standard. Yeah. [LB88]

SENATOR ASHFORD: Yeah. And I think this committee... [LB88]

SENATOR MCGILL: Yeah. [LB88]

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SENATOR ASHFORD: ...and the Legislature generally has recognized the fact that those who have received a permit to carry a concealed weapon have gone through training, and it's important, and we recognized that last year in the bills we passed. And so, it's an ongoing discussion, and it's good to see you again, Mark. See you, have a good weekend. Thank you. [LB88]

SENATOR CHRISTENSEN: Yep. Thank you. [LB88]

SENATOR ASHFORD: Let's move on to the final bill of the day. What's the number? [LB88]

SENATOR LATHROP: LB100. [LB100]

SENATOR ASHFORD: LB100? Senator Coash. [LB100]

SENATOR COASH: Good afternoon, Chairman Ashford, members of the Judiciary Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent District 27 here in Lincoln. And today I'm here to introduce LB100. LB100 is a bill that aligns with Nebraskans' expectation of the judicial process. This bill is about accountability, justice, and also resources. It eliminates voluntary intoxication as a defense in criminal cases. Nebraskans expect accountability through the judicial process. The defense of, "the drugs made me do it" does not fly with our citizens. Making choices to use drugs or alcohol means accepting the consequences that go with those actions. If you make a conscious choice to drink or get high, you should be held responsible for your behavior. History has shown that neither jurors nor the public at-large accept the idea that someone should be legally excused for criminal acts due to claiming temporary mental illness after voluntarily ingesting drugs or alcohol. So it is time to remove that possibility of defense for good. LB100 eliminates the not responsible by reason of insanity defense in situations where the defendant was voluntarily intoxicated or high when he or she committed their crime. In order to hold criminals accountable for their actions, we need to remove the possibility of this defense. Under this bill, unless the defendant first proves by clear and convincing evidence that the intoxication was not voluntary, intoxication cannot be used as a defense to negate the intent element of a criminal charge. Thirty-four states have enacted similar legislation including Colorado, Montana, North Dakota, Oklahoma, Wyoming, and South Dakota--most of our neighbors. Common law (sic) tells us that when intoxication caused by voluntary drug and alcohol abuse is not a mental illness. Even if it were a mental illness, it could be cured, simply by stopping the use of intoxicating substances. Whenever someone is found not guilty by reason of insanity, they are to remain in custody until such time their mental illness is cured. As a result, someone that is in treatment for mental illness caused by drugs or alcohol, intoxication may be immediately ready for release once they are no longer intoxicated. The

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temporary, voluntary intoxication defense has been denied in every jurisdiction that has had the opportunity to address it. This defense is not to be confused with that of someone who acquires a mental illness caused by a prolonged pattern of drugs or alcohol abuse nor is it to be confused with someone who has become impaired because of involuntary ingestion of drugs or alcohol. Both exceptions are recognized defenses that this bill does not seek to touch. This bill seeks to only eliminate the defense of temporary mental illness brought on by voluntary ingestion of drugs or alcohol in claims made that the perpetrator was incapable of differentiating between right and wrong and appreciating the nature of their conduct and was incapable of understanding the differences between the rightness and wrongfulness of their actions to such a degree that they should not be held responsible. This is a defense that has been used in our state. I'm going to give you a couple of examples of how it has been successful. First example is the case of Shane Tilley. Many of us in Lincoln remember the heartbreaking story of a young Lincoln man, Andy Lubben, who was stabbed to death by a friend in February 2006. This horrific event is something Andy's family will never forget. The friend, Shane Tilley, stabbed Andy more than 20 times while under the influence of 32 tablets of Coricidin cough medicine. Tilley was charged with first-degree murder, and he was found not guilty by reason of insanity. Because of that, he is held in a locked hospital facility at the Regional Center instead of a correctional facility. And this past July, while on a walk outside, with unarmed staff members, he escaped. He did a good job of hiding from law enforcement, and it took almost eight hours to find him. He was lucid enough to make an escape and competent enough to stay hidden all day. Fortunately, he did not hurt anyone else while he was out, but he could have. Since he wasn't a convict, he cannot be charged with escape. Another example, in May 2009, Melecio Camacho was charged with raping and killing a 3-year-old South Sioux City girl. At trial, Mr. Camacho and his defense attorneys alleged that Mr. Camacho voluntarily snorted \$50 of cocaine, smoked some marijuana, and drank several beers just prior to raping and killing the toddler. As a result of this allegation, the defense argued that he was not responsible by reason of insanity, as he did not know the difference between right and wrong nor could he comprehend the nature and the quality of his acts. Fortunately the jury disagreed with his argument, and he was found guilty of first-degree murder. Joseph Hotz--In December 2008, Chadron State College student, Joseph Hotz, stabbed and killed his roommate while under the influence of mushrooms. Afterward, he continued to cause terror as he walked through the streets of Chadron wielding a knife. At his trial, he claimed that he was mentally ill at the time of his crime due to voluntarily ingesting the mushrooms just before his spree. Again, a jury rejected this claim, and he was convicted of second-degree murder and numerous other offenses. In both the Hotz and the Camacho cases, the defense was allowed, despite the prevailing law on the subject, from many other states in the country and the pronouncements of such temporary voluntary intoxication is not a mental illness. As a result, the state expended necessary resources and wasted time countering these arguments at trial. Both Camacho and Tilley are examples of cases where voluntary intoxication was used to advance an insanity defense. We're talking about court resources here. And, finally, I

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want to tell you the story about Kyle Bormann. In 2008, Kyle Bormann was convicted of gunning down a college student who was waiting for food in a Kentucky Fried Chicken drive-in. At his trial for first-degree murder, he successfully argued that he was too drunk to form the necessary premeditation element necessary for him to be convicted of first-degree murder. As a result, he was only convicted of second-degree murder. This bill will prevent the likes of Kyle Bormann from making an argument such as this in the future. This bill was similar to a bill that Senator McGill brought two years ago. It was drafted with the assistance of the Attorney General. It looks a little bit different based on some things that we learned since then. I think we've got more cases since this bill was last brought to illustrate the need for this type of defense. So with that, I'll take any questions. [LB100]

SENATOR ASHFORD: Any questions of Senator Coash? Senator Council. [LB100]

SENATOR COUNCIL: Yes, thank you, Senator Ashford and thank you, Senator Coash because the Kyle Bormann situation was particularly troubling to me. But I do have a concern about subsection 4, because as I heard you in your opening, you acknowledged that there are mental conditions that can result from years of voluntary ingestion. And the way I read subsection 4, it really doesn't cover that. I mean, and maybe all it takes is the insertion of the word "temporary" or something because insanity does not include any condition that was proximately caused by the voluntary ingestion. Well, paranoid schizophrenia could be proximately caused by the voluntary ingestion, and I think what your intent is, is to cover the situation where it is a temporary condition caused by the ingestion. So I don't know whether "temporary" will do it, but I just want to understand your...it's not your intent to prevent someone from asserting an insanity defense if they have a diagnosed mental condition that was caused by years of prolonged usage. [LB100]

SENATOR COASH: Prolonged use. There's two exceptions in this bill, Senator Council, and one is, if the ingestion of the substance was done without that person's consent or involuntarily ingested. And two is, through prolonged intoxication. We know that someone's prolonged use of drugs or alcohol can permanently damage the receptors in the brain, and we know that that can cause permanent brain damage. We don't seek to address that in this bill, and we'll take a look at your suggestion, and we'll make sure that that concern is taken care of. [LB100]

SENATOR COUNCIL: Okay, because I don't see that prolonged use or... [LB100]

SENATOR COASH: Well, we did put it in Section 1. [LB100]

SENATOR COUNCIL: But see, Section 1 talks about you didn't know it was an intoxicant or you didn't do it voluntarily, and that just talks about you can't say I wasn't responsible if I'm under the influence of something at the time. But over here in

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subsection 4 where it says you can't raise the insanity defense. [LB100]

SENATOR COASH: That may be in a different section, but I understand... [LB100]

SENATOR COUNCIL: Okay. [LB100]

SENATOR COASH: ...we have the same intent in mind, Senator Council, and we will...we'll make sure that gets addressed. [LB100]

SENATOR COUNCIL: Okay, okay, okay. Thank you. [LB100]

SENATOR LATHROP: Thank you, Senator Coash. Any other questions? I don't see any. Proponents. [LB100]

COREY O'BRIEN: Good afternoon, Mr. Acting Chairman. My name is Corey O'Brien, 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. I'm here today, appearing on behalf of Attorney General Jon Bruning, in support of LB100. Many of the comments that I want to address were already addressed by Senator Coash, and I would echo the comments that he made. LB100 is almost virtually identical to a bill that was brought by Senator McGill in 2008 in response to the Shane Tilley case. The prosecutor in Mr. Tilley's case is here today as well and will testify later about her experiences with that case as it relates to LB100. LB100 is a bill that my office has been working on in conjunction with Joe Kelly and the Lancaster County Attorney's Office, Don Kleine in the Douglas County Attorney's Office, and the Nebraska County Attorneys Association for the last three-plus years. Mr. Kleine wanted to be here today. He asked me to echo his support for the bill. He had a previous commitment and is unable to be here. Rather than rehash what I had to say in 2008, I just wanted to address a few things that are different since 2008 when we brought the bill with the help of Senator McGill. In 2008, the bill brought by Senator McGill, I think, lost a little bit of momentum largely because up until that point, the Tilley case was really the only case where this was an issue. However, since that time, as Senator Coash mentioned, there's been two other cases. He mentioned the Hotz case out of Chadron where the defendant...that was a case, was handled by my office, took about an eighth of an ounce of Psilocybin mushrooms and stabbed his roommate and threatened to kill neighbors as he went on a rampage down the streets of Chadron. The second case was the (inaudible) of Mr. Camacho which was a case that I handled this past summer up in Dakota County, Nebraska, in which Mr. Camacho anally and vaginally raped and then suffocated a 3-year-old girl by the name of Evelyn Verdugo in front of her 7-year-old brother. Mr. Camacho claimed that his crime was committed shortly after taking approximately \$50 worth of cocaine, drinking some alcohol and beer, and then smoking some marijuana. Mr. Camacho and Hotz both claimed that they should not be held responsible by reason of insanity, because they had a temporary mental illness. In Mr. Camacho's case, it was a cocaine induced psychosis that was

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developed as a result of his \$50 worth of cocaine, and that rendered him incapable of appreciating the nature of his conduct as well as knowing the difference between right and wrong with respect to that conduct. We see this as a more viable defense these days. It's being used as a go-to defense. It is causing the state to spend additional resources which is not the purpose of why we're here. But the purpose is, is that Nebraska has been silent on this issue. Defense attorneys, prosecutors, and judges, for that matter, are asking for this body to end the silence that Nebraska has had on this issue, to advance LB100 to make the policy decision that this is not a viable defense in the state of Nebraska. Thank you. [LB100]

SENATOR LATHROP: Thanks, Corey. Any questions? Senator Council. [LB100]

SENATOR COUNCIL: Mr. O'Brien, do you want to comment on the question I posed to Senator Coash about a condition that is a legitimate, certifiable mental condition that's caused by prolonged use of intoxicants? [LB100]

COREY O'BRIEN: I'd love to, Senator. I almost called you Your Honor. I apologize (laugh). [LB100]

SENATOR COUNCIL: Hey, I don't mind. (Laughter) Elevate me on Friday afternoon. [LB100]

COREY O'BRIEN: What we're really trying to seek to do here is not...there are two trains of thought. I wish I didn't know all this, but after the Camacho case, I, of course, do. There's what is called settled insanity which is...and settled insanity has been defined as insanity that develops as a result of prolonged intoxication or alcohol use or drug use. Usually, patients derive a mental condition as a result of that, that being schizophrenia, paranoid schizophrenia, you name it, as a result of that prolonged drug use. That usually is the mental disease that they acquire that the psychiatrist comes in and says, as a result of his prolonged drug use, he has schizophrenia, and that is called settled insanity. With respect to what Mr. Camacho, Mr. Hotz, and Mr. Tilley had, they had what is called temporary insanity. And in Mr. Camacho's case, it was the diagnosis of the mental illness was that they he had a cocaine induced psychosis as well as some other minor diagnoses that were directly related to the drugs themselves, causing him to have the mental illness that he had. So the goal of this legislation is to directly prevent those temporary mental illnesses that are directly or proximately caused by the drugs themselves and not some permanent, non-self-induced, directly self-induced mental illness like settled insanity that develops over time that you're talking about. Now, if that needs to be cleaned up, I certainly would love the opportunity to work with the committee that we make it abundantly clear that we're not trying to curtail settled insanity, because insanity does serve a viable defense in our system. There is no doubt that there are people that commit crimes that are insane. However, as Senator Coash says, we want to hold people responsible for their acts. We believe the result is within

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the risk of the drugs that they take voluntarily, and they should be held accountable for that. So I would appreciate the opportunity to work with this committee if we can make that language a little cleaner. [LB100]

SENATOR COUNCIL: Okay, because that's all I wanted, because as it reads, insanity does not include any condition that was proximately caused by the voluntary ingestion. I mean, this is proximately caused if my voluntary ingestion over a period of time leads me to paranoid schizophrenia, so if... [LB100]

COREY O'BRIEN: If we can make it more specific, so I don't have to have a judge guess as to what we meant, then absolutely, I would look forward to the opportunity to... [LB100]

SENATOR COUNCIL: ...temporary condition or...yeah. Or precipitating condition, but we need to add something there that makes that...that clear. [LB100]

COREY O'BRIEN: Thank you, Senator. That's excellent. [LB100]

SENATOR COUNCIL: Thank you. [LB100]

SENATOR LATHROP: I do have a question for you. [LB100]

COREY O'BRIEN: Yes, sir. [LB100]

SENATOR LATHROP: I can appreciate and agree with the idea of taking away voluntary intoxication as a defense, but what about voluntary intoxication as it relates to your ability to form some kind of requisite intent like first-degree murder versus second where you may intend to shoot somebody, but you don't have the premeditation. So do you think it should still be available for premeditation? [LB100]

COREY O'BRIEN: Well, I will take the three cases as an example or maybe even just Mr. Tilley's case as an example. He was charged with first-degree murder. He claimed that...and in Mr. Camacho's case as well, they both claimed both defenses. They claimed, not responsible by reason of insanity, because of their temporary mental illness caused by the drugs as well as voluntary intoxication defense which is provided in case law. It's not a statutory provision in our state. There's an NJI instruction on it. I think you guys have a copy of that that was handed out to you. In that case, if you take away the not responsible by reason of insanity that this bill proposes to do, that still leaves the voluntary intoxication defense. So what happens if the voluntary intoxication defense remains? The purpose for which we are seeking to hold offenders accountable is still circumvented. Individuals will still be able to claim that I wasn't able to form the requisite intent to commit first-degree murder. In Mr. Tilley's case, rather than go to the Regional Center, he would have walked out of the courtroom a free man. So if you don't

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take away both, then, again, you get to that absurd result that you're trying to prevent altogether. [LB100]

SENATOR LATHROP: But don't you come up with kind of an absurd result? I'm just arguing with you lawyer to lawyer. [LB100]

COREY O'BRIEN: Yes, sir. [LB100]

SENATOR LATHROP: Don't you come up with an absurd result if one of the...it's not intentionally killing another person, but on top of that, it has to be premeditated intentional killing of another person. I get the intentional killing. This shouldn't stop that, because that shouldn't be your defense. But can't you...even where you as a prosecutor couldn't prove premeditation, under the circumstances, say, well, it's there because he was intoxicated, and if he wasn't intoxicated, he could have been able to develop the requisite premeditation? [LB100]

COREY O'BRIEN: I, again, I appreciate the argument back and forth. And I would still argue that, you know, the gaps remain there to such an extent that, again, we undermine the purpose for which the bill is, and that's to hold people accountable. It may well... [LB100]

SENATOR LATHROP: I don't have a problem holding them accountable for intentionally killing somebody. [LB100]

COREY O'BRIEN: ...will it reduce their...will it reduce their crime? Will it reduce their sentence? My argument and counter to that, Senator, would be that there is a proper place for evidence of someone's voluntarily intoxicating themselves or taking drugs, and that is in sentencing, in mitigation of their sentence. That's where that should reside rather than in the guilt or innocence phase, and whether or not they are, in fact, culpable for committing their offense. I'm not trying to prevent them from presenting that in mitigation, but, again, it's trying to close those gaps, so that they are at least held criminally responsible for their acts. [LB100]

SENATOR LATHROP: Yeah, but if you keep the...yeah, okay. Well, we can talk about it. I do see it...I understand they intended it...this would take the place or stop somebody from saying, I didn't intend it, because I was stoned or drunk or whatever. A premeditation requires more of a planning, a thoughtful sort of a process that goes on well in advance of pulling the trigger, and if you're intoxicated... [LB100]

COREY O'BRIEN: And maybe that's a discussion we can have. What mental states are we talking about that could actually be affected? I mean. [LB100]

SENATOR LATHROP: Right. Senator Harr. [LB100]

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SENATOR HARR: Thank you. I guess I have a question. If it takes away premeditation, then it's murder one, and so that's automatic life, so it doesn't go to sentencing. Now, if you talk about... [LB100]

COREY O'BRIEN: It can if it's a death penalty case. [LB100]

SENATOR HARR: Fair. But you're already doing life, whereas if you really want to go to mitigate or sentencing, then that's exactly the right...murder two would be the...probably the proper place for the mitigation which is what Senator Lathrop was talking about. Is that correct? I mean, I guess that...if I'm using your logic,... [LB100]

COREY O'BRIEN: My argument would... [LB100]

SENATOR HARR: ...then what Senator Lathrop is doing is exactly what you want, is the exact things you want. [LB100]

COREY O'BRIEN: It being used in mitigation and sentencing? [LB100]

SENATOR HARR: At sentencing, yeah. I mean, I don't think life versus death is really mitigation, in my humble opinion but. [LB100]

COREY O'BRIEN: Well, I mean, that is one of the mitigating factors in any capital case is whether or not they were under the influence of any narcotics or alcohol at the time they committed their offense. So, again, I would argue that there is a proper place for it, that being largely sentencing, and I appreciate, you know, if someone is criminally evil, and should we hold them just as accountable if they weren't on drugs as if they were on drugs? [LB100]

SENATOR LATHROP: Yeah, but it's almost like you are taking voluntary intoxication and saying, if they're voluntarily intoxicated we're going to not allow them to say, I didn't intend to do something. But that's a lot different than planning something, right? If...so somebody gets in a quarrel with somebody. They're drinking and gambling and they're fighting over a girl, and somebody pulls out a gun and shoots somebody. They can't say, well, I was intoxicated and I didn't mean to do it. But, at the same time, they ought to be able to say, look, I didn't premeditate this thing. I was a mess all night long, right? So at least you can get them on a second, but can you get them on the premeditated sort of...the premeditated version of first-degree murder? [LB100]

COREY O'BRIEN: I guess my only thought about that is, is...and my concern would be, well, we're saying that you can be so drunk that you can't form certain mental states but in other respects you can be drunk enough to form intent. [LB100]

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SENATOR LATHROP: It's the difference between a mental state and deliberating, right? But I think it's worth...I appreciate what the bill does. I think it's something that we at least ought to agree that we thought about. [LB100]

COREY O'BRIEN: I agree. [LB100]

SENATOR LATHROP: Yeah, and come to... Any other questions? Seeing none, thanks for coming down, Corey. [LB100]

COREY O'BRIEN: Thank you. [LB100]

SENATOR HARR: We should have some drinks over this (laugh). [LB100]

SENATOR LATHROP: Not very many. [KB100]

SENATOR HARR: Not too many, no. [LB100]

SENATOR LATHROP: Any other proponents. If you'd like, come forward, please. [LB100]

JEFF LUBBEN: Good afternoon, members of the committee. My name is Jeff Lubben. My son, Andrew Lubben, was murdered... [LB100]

SENATOR LATHROP: Jeff, can you spell your last name? I apologize. [LB100]

JEFF LUBBEN: L-u-b-b-e-n. [LB100]

SENATOR LATHROP: Okay. [LB100]

JEFF LUBBEN: My son, Andrew Lubben, was murdered by Shane Tilley. He used the insanity defense. He took...that Friday, I guess, before it happened he took 32 Coricidin tablets to get high. Sunday he stabs my son 27 times. I don't know where to go. It's tough, that somebody could get off on that when Coricidin is supposed to be for colds, not to get high. You've got alcohol, if you want. But a drug definitely made Mr. Tilley do things that any other drug like alcohol would probably not do. I don't know about marijuana, possibly cocaine, crack. But if we don't do something with this law, the streets are going to start saying what we do here. And we can't have that in this community, state of Nebraska, and that is all I have to say. [LB100]

SENATOR LATHROP: Thank you. I appreciate your testimony. [LB100]

AMY JACOBSEN: Good afternoon. My name is Amy Jacobsen, A-m-y J-a-c-o-b-s-e-n. I prosecuted Shane Tilley. Shane Tilley took those Coricidin cough and cold for the

purposes of getting high. He had done it once before. He was taking more this time around to see if he couldn't push it a little and get a little bit higher. This was an over-counter cough and cold medicine. He was psychotic at the time he killed Andy Lubben. There were two different experts, and they were actually competing experts. The state's expert believed that the only reason he was psychotic was because of the drugs, and that he had no underlying mental illness. The defense attorney disagreed, saying that he was psychotic, but, in fact, he had an underlying mental illness. As it turns out, the defense expert was actually correct that Mr. Tilley does have an underlying mental illness. And they proved that, because they took him off his antipsychotic drugs, and he became psychotic again. But the defense expert also testified, as our expert, that this drug could have made him psychotic regardless of any underlying mental illness. Any one of us could take 32 cough and cold drugs and become psychotic. And what the defense expert said was, that this drug was...his description was that it was the match that lit the psychosis. And, in fact, when those drugs went out of Mr. Tilley's system, he remained psychotic for a number of weeks. But his exact words was, they were the match that lit the psychosis which in my mind is exactly what proximate cause is. But for those 32 cough and cold pills that day, Andy Lubben would be alive today. There is an underlying mental illness with Shane Tilley. Perhaps someday that would have manifested itself; perhaps it would have manifested itself by now four years after the fact. But the point being, his psychosis happened from taking those drugs, and he isn't in prison now, and he never will be in prison, and he should be in the state's estimation. And that's all I have to comment on that. [LB100]

SENATOR LATHROP: Very good. Thank you for your testimony. Are there questions? I see none. Thanks for coming down today. Appreciate your testimony. [LB100]

AMY JACOBSEN: Thanks. [LB100]

SENATOR LATHROP: We are still on proponents. [LB100]

MICHELE BELCASTRO: Good afternoon. My name is Michele Belcastro, M-i-c-h-e-l-e B-e-l-c-a-s-t-r-o. On June 11, 2010, my mother-in-law, Rose Marie Belcastro, was brutally beaten and stabbed and left for dead by her 24-year-old son, Patrick. Rose was attacked because Patrick had made the choice to take methamphetamine. Rose was found in her home by her other son, who happens to be an Omaha police officer. Rose's injuries were so traumatic, that when he found her, he thought that she had been shot in the face. She was trying to get up to get help, and she was falling on her own blood. Upon further examination of her injuries, it became apparent that she had been stabbed and was slashed in the face and was beaten. Patrick was apprehended less than a block away. He had fled the scene, and he had disposed of the weapon. He was covered in blood, and he had told the neighbor as well as the police that he had just killed his mother. Rose was rushed to University Hospital and had to undergo emergency surgery. She had shattered eye sockets that would need to be replaced with

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titanium plates. She would most likely be blind. Her nose was broken in three places, and her front teeth were knocked out. The ER doctors spent over an hour searching for her under eye skin, because they knew how difficult it would be to graft it, and it is nearly impossible, because we wanted to keep her eye. She was placed in the ICU and was unable to breathe on her own. After a week in the ICU, we were told that Rose had suffered a traumatic brain injury. After another surgery and four weeks at UNMC, she was transferred to Immanuel Hospital for rehabilitation. She had to relearn everything from what a banana was to walking up stairs. She has over \$300,000 in medical bills, and my husband and I had to hire a lawyer and become her guardian conservators, so that she would not lose her home, and she would not go bankrupt. Before the attack, she was a 64-year-old vibrant woman, working full time, self-sufficient and very healthy. Now she is dependent; she is disfigured, and will probably never be able to live on her own. She also suffers from posttraumatic stress disorder, and all of this was because Patrick had made the decision to take an illegal substance. Patrick was charged with two felonies, first-degree assault and assault with a deadly weapon. He was given a psychological evaluation by the Lincoln Regional Center, and one doctor found him to be competent to stand trial, but was insane at the time of the crime. On December 20, 2010, Patrick was found not guilty for reason of insanity. The criminal charges had been dropped. The Lincoln Regional Center set up a treatment plan for Patrick. The treatment plan requires him to be placed in rehabilitation for four to six months. I find it even sad for Patrick that he is not being held responsible or accountable for his crime. He needs punishment, and rehab is not going to do it. This shocking gap in the system is not protecting or helping anyone. Thank you. [LB100]

SENATOR LATHROP: Very good. Thank you for sharing that story. [LB100]

MICHELE BELCASTRO: Thank you. [LB100]

SENATOR LATHROP: Are there any questions? I see none. It's important that we hear these, and I appreciate you coming down on a Friday afternoon to share that. [LB100]

MICHELE BELCASTRO: Thank you very much. [LB100]

SENATOR LATHROP: Thank you. Are there any other proponents? [LB100]

AL RISKOWSKI: Al Riskowski. It's R-i-s-k-o-w-s-k-i, Nebraska Family Council. I don't have much to add today other than Michele contacted our office, and when I heard the story that Michele had to speak to us, we thought there is such a gap in the law, we want to at least, as a group, come forward and say, you know, this certainly is a justice position. This is about responsibility. There is a gap in the law, and we believe that it should be filled, that individuals shouldn't be able to be high on an intoxicant of some sort, and get a lesser sentence because of that. Society shouldn't have to bear the brunt of responsibility for someone's irresponsibility, taking and ingesting something of this

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nature voluntarily. So we believe criminal punishment is meant to condemn a person for a blameworthy crime, and when they willingly, knowingly ingest a mind-altering intoxicant, you should be held accountable for your actions. So thank you for your consideration of this, and I hope that you'll move it to the full Legislature. [LB100]

SENATOR LATHROP: Thanks, Al. No questions. Okay, thank you very much. Any other proponents here today? Anyone here in opposition to LB100? [LB100]

CHRIS EICKHOLT: Good afternoon. [LB100]

SENATOR LATHROP: Good afternoon. [LB100]

CHRIS EICKHOLT: (Exhibit 10) Senator Lathrop, members of the committee, my name is Chris Eickholt, E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We oppose LB100. The bill attempts to do two things. And Senator Lathrop, I think you talked about this; Senator Council also. We are opposed to the bill in both parts. One portion of the bill tends to eliminate the defense of insanity caused by voluntary consumption of alcohol or drugs. That's one part, and that's a narrow point in some respects, and it's a narrow effect on the law, and it may be constitutionally, and it may be legally permissible, although we still oppose it. The other portion of the bill does, and that's actually Section 1 of the bill, is it deals with a separate issue relating to intoxication with respect to a mental state, and the state's burden of proving as well as a defense burden of proving intoxication is related to mental state for all crimes. Those are two separate things...not guilty by reason of insanity is different from the state's burden of proving up all elements in a crime including the mental state. With respect to the defense of insanity, that's Section 2, subsection 4. What you hear, I think Mr. O'Brien was talking about, and what you hear...and the reason this is developing, I think, in the courts. And I'm not an expert in this, but I think there is an ongoing debate in the psychological and psychiatric community as to whether drug-induced psychosis is even similar...should be treated similar as insanity caused by mental illness. And I know there's a debate at least and a division among some psychologists. Some psychiatrists think that a person who's high on drugs ought to be treated just like a person who's suffering from profound schizophrenia, and they should not be held responsible for their actions because of that. Other psychiatrists and other professionals disagree, and say, you choose to drink, you choose to take drugs. They're different. And what this bill does, even though this debate has not been resolved, is it takes a particular side. And, unfortunately, we didn't hear anyone in the mental health community or the medical community or the psychiatric community that maybe explains what's going on here. Additionally, it does make sense, and what Senator Coash explained when he introduced the bill, it does make sense to hold people accountable for what they choose to do. But the reality is, particularly when you're talking about cough medicine drugs; when you talk about things like K2, as you heard earlier this week, when people take these drugs, particularly young people, they don't know what

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it's going to do to them. And many times, it's the first time they take it or maybe the second time, and they take more. And it causes them to be in a state of mind where they cannot appreciate the nature of their conduct and tell right from wrong. And they, therefore, fit the legal definition of insanity. I think you heard earlier this week, well, people do it on K2. That's why it's such a terrible drug, and many people don't even know what it's going to do to individual people, what it's made of, how it's made, or anything like that. So what you have is you have people who are being held accountable for their actions and their choice without realizing what their choice is going to lead them to. There is a practical problem with this bill. You look at page...or you look at line 19. It seems to limit it with respect to voluntary intoxication and insanity that's proximately caused by the voluntary consumption of the controlled substance. And Senator Council talked a bit about this. The reality is, is that many people who consume drugs and many people involved in the criminal system also suffer from a criminal or mental illness. And that mental illness, many times, is confounded or impacted by the concurrent use of drugs. So I think you will have a proximate cause problem. If a person, for instance, has a mood disorder such as bipolar, and it consumes the amphetamine or some other mood-altering drug, I think it is going to be a problem, and I think it is going to be a battle of the experts, as it was in the Shane Tilley case as to what proximately caused it. The separate issue relates to intoxication as a defense... [LB100]

SENATOR ASHFORD: Chris, I think we're going to go to questions. Senator Council. [LB100]

SENATOR COUNCIL: Thank you. Chris, the second issue is what? [LB100]

CHRIS EICKHOLT: The second issue relates to the general defense of intoxication. I've provided copies of the NJI. That is the statement of the law as developed in the court system, and that is a factor that the fact-finder can consider intoxication. When the fact-finder or judge or jury determines whether a person has the required mental state to commit the crime. That's a compromise in the law. That doesn't say that you walk on a case if you get drunk. That doesn't say that you beat the case. It doesn't say anything like that. The prosecutors may not be happy with the instruction. Frankly, the defense lawyer is not happy with it either. We wish it was broader. It only applies to specific intent crimes such as Senator Lathrop explained, on the element of premeditation, and the law is built that way. You do have diminished responsibility, and this is a tradition in the common law for those people who do things under the influence. Rightly or wrongly, that's just something that was developed. This bill eliminates that. It's going to have profound effects, not only on the serious charges such as murder, but on a wide variety of charges with respect to specific intent crimes. Anyone connected with law enforcement will tell you that many people commit crimes when they're under the influence of drugs or alcohol, usually when they voluntarily consume those. If you just do away with all the case law that's developed, and NJI will do this, it's our position

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

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January 21, 2011

you're going to have serious constitutional problems. You're going to have burdens shifting on the defendant. You're going to have due process problems where the state doesn't have to meet certain elements, and we would argue that that's not something that has anything to do with the Shane Tilley case. [LB100]

SENATOR COUNCIL: Thank you. [LB100]

SENATOR ASHFORD: Thanks, Chris. Do we have any other opponents? Neutral testifiers? Senator Coash. [LB100]

SENATOR COASH: First of all, I'd like to thank the families who came here and testified. They do their loved ones honor and justice by being here today. I also want to thank the lawyers on my committee. I'm reminded every day in this committee the value of having practitioners in this area, so thank you. Thank you to all of you for your questions. Those are very helpful. As I hope I've illustrated and the testifiers have illustrated, this defense does happen, and it is a gap in our statutes. If we don't take action and pass this now, and next year I'll bring it again, and we'll have another family who's going to come up and say, this is what happened to my loved one, and this is what I'm going through because of how this law is written. I believe this legislation is reasonable. I believe it is what is expected of us as a body with regard to policy. It's time to not accept excuses for behavior. We do have to end this sentence. This is good policy for our state, and I'll just close by saying, we'll make this policy right. We'll make it technically sound, and we'll bring this to the committee, and we can take it from there. Thank you. [LB100]

SENATOR ASHFORD: Thank you, Senator Coash. Thank you all for coming. That concludes the hearing. Thanks to the families for coming, and that ends the... [LB100]