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Judiciary Committee
January 27, 2011

[LB129 LB201 LB202 LB203 LB390]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 27, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB129, LB201, LB202, LB203, and LB390. 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 MCGILL: All right, everyone. Thank you for coming today. We've got obviously a lot of good stuff on the agenda to warrant a roomful of people like this. Welcome to the Judiciary Committee. I am Senator Amanda McGill. I am the Vice Vice Chair of this committee. (Laugh) With us today we have Senator Burke Harr on my right; directly to my left is Senator Brenda Council; and we also have Senator Colby Coash; and Senator Tyson Larson over there on the far end. Just a quick reminder to go ahead and turn your cell phones off or put them on silent so that we don't have anyone interrupting testimony unintentionally. When you do come up, there are papers to fill out on that front table to let us know who you are and what side you're testifying on. And with that, we'll go ahead and start the hearing and open up with Senator Ashford on LB390.

SENATOR ASHFORD: (Exhibit 1) Thank you, Senator McGill and Vice Vice Chair McGill. I want to introduce LB390 and I think what I'm going to do, this bill was introduced, members, on behalf of Governor Heineman. And I think, rather than read my opening, I think what I'll do is just read the Governor's letter, because it capsulizes what I was going to say. So with that, I will read the letter from Governor Heineman, dated January 27: I am writing to express my support for LB390, which was introduced at my request. LB390 represents one of a number of substantive law bills needed to implement my budget recommendation for the 2011-2013 biennium. I would like to express my thanks...well, that's all right, to me, but we can go on. These are challenging times that require policymakers to make difficult decisions. My recommendations to you made targeted reductions rather than across-the-board reductions. One of my recommendations is the elimination of the Jail Standards Board and its accompanying programs and staff. I do not recommend this reduction lightly because I recognize the fine work of the board and staff and the benefit it provides to local jails. However, in these challenging times, it is important that we evaluate nonessential programs and mandates on other levels of government. I have heard from some local officials who believe the mandates from the Jail Standards Board represent unfunded state mandates on local governments. As a result, I believe we should eliminate the board and recoup the savings for other state priorities and free political subdivisions of an unfunded state mandate. In the place of the current jail standards published by the Jail Standards Board, I propose nonmandatory guidelines to give political subdivisions a framework to follow in the governance of jails. This would provide flexibility to locally elected officials to determine the best course of their jail while continuing to require

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established safety and security standards. LB390 also eliminates the Community Corrections Council, but not its staff or programs. I continue to be in support of correctional policy that lessens reliance on incarceration. The council has done great work in establishing the foundation on which to build our community corrections program, but now it is time to eliminate the unneeded oversight of a 20-member council and let the professionals continue to build on their work and fully operationalize community corrections in our state. Finally, I would like to highlight another portion of LB390. I strongly believe government workers should have accountability to elected officials. LB390 proposes to provide accountability within the Nebraska Commission on Law Enforcement and Criminal Justice by ensuring that division heads are hired, removed, and report to the executive director of the commission. Again, members, this is a substantive law change focused on the budget. It is not specifically a law change that we recommended in our LR542 package but it does address areas in our jurisdiction. With that, Madam Co-Chair, I would be happy to... [LB390]

SENATOR MCGILL: Thank you, Governor Heineman and Senator Ashford. (Laugh) [LB390]

SENATOR ASHFORD: Yes. [LB390]

SENATOR MCGILL: Are there any questions for Brad? No? Are you going to come back here? [LB390]

SENATOR ASHFORD: Yeah. [LB390]

SENATOR MCGILL: All right. While he's heading back, we can start to take proponents. [LB390]

SENATOR ASHFORD: Good afternoon, Mike. [LB390]

MICHAEL BEHM: (Exhibits 2 and 3) Good afternoon, Senator Ashford. Senator Ashford, members of the Judiciary Committee, my name is Michael Behm, B-e-h-m. I am the director of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly known as the Crime Commission. I'm here today to testify in favor of LB390. This legislation makes several changes to the Crime Commission's statutes and is part of Governor Heineman's recommended budget. The Governor, in his recommended budget, has targeted cuts. One of the cuts is the elimination of the Jail Standards Board. The board and the accompanying staff are housed administratively in the Crime Commission. The staff inspects local jails for compliance with jail standards and provides other coordination and services to local jails. LB390 would replace the jail standards with recommended guidelines for local jails, and it would be left to the local governments on how best to govern local jails. Having no jail standards is not unusual for a state. According to information from the National Institute of Corrections, 17 other

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states have no jail standards or inspection programs, including our neighboring states of Missouri, Kansas, South Dakota, and Wyoming. Currently, we have at least eight facilities out of compliance with the standards. To force the facilities back into compliance would take action by the Attorney General's Office. In my time at the Crime Commission, no such action has ever been taken. LB390 would provide both the state with savings in the elimination of the program and would remove an unfunded mandate from local government. Section 33 of LB390 eliminates the requirement to collect and analyze data on homicides in Nebraska. Legislation was passed in 1999 which assigned the Crime Commission the duty to review and analyze all criminal homicide cases in Nebraska from 1973 to 2001 and issue a report examining the race, gender, economic status, religious preference of the defendant and the victim, the charges filed, the result of judicial proceedings, and the sentence imposed. The commission contracted with a law firm to conduct this study and the study was released on October 10, 2001. Since the release of the study, the commission has received \$20,000 each year to collect the data. There are insufficient funds to produce a new study and it makes fiscal sense to discontinue the requirement to collect data in this manner, as the data is already collected in other ways. LB390 also changes statutes regarding the Police Standards Advisory Council. The PSAC is an advisory council that oversees the operation of the Law Enforcement Training Center. LB390 changes language regarding the supervision of the training center director and provides that the executive director of the Crime Commission shall hire, fire, and supervise the training center director. This is currently a function assigned to PSAC and the Crime Commission itself. Finally, LB390 amends statutes regarding the Community Corrections Council director and Office of Violence Prevention director. These two positions are currently appointed by the Governor. LB390 gives the Crime Commission executive director the authority to appoint and remove staff for these two positions. My experience prior to becoming executive director of the Crime Commission came from serving in the military and a 26-year career with the Nebraska State Patrol. Both of these were large organizations with clear lines of authority. Everyone could easily determine who was in charge. Unfortunately, this has not always been the case at the Crime Commission. LB390 would address this issue by making it clear that the division heads report to the executive director and not a board, a council, or a commission. I am appointed by the Governor and confirmed by the Legislature. LB390 would ensure accountability of all divisions of the Crime Commission to elected officials and would improve communication and productivity within the Crime Commission. [LB390]

SENATOR ASHFORD: Mike, I'm going to just...I think that's a good summation. [LB390]

MICHAEL BEHM: Okay. [LB390]

SENATOR ASHFORD: Any questions of Mike? Yes, Senator Harr. [LB390]

SENATOR HARR: Thank you, Mr. Chairman. You stated there are 17 states that have

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no jail standards. [LB390]

MICHAEL BEHM: Yes. [LB390]

SENATOR HARR: What are those 17 states? [LB390]

MICHAEL BEHM: Senator, I don't know the...all 17, just the ones that I mentioned that surround our immediate state. Other than the state of Iowa, our surrounding states do not have jail standards. [LB390]

SENATOR HARR: Okay, but you'd be willing to get that information for me? [LB390]

MICHAEL BEHM: I can, Senator, yes. [LB390]

SENATOR HARR: Okay. And then you stated eight were out of compliance. [LB390]

MICHAEL BEHM: Yes. [LB390]

SENATOR HARR: And what are those eight? [LB390]

MICHAEL BEHM: The eight jails that are out of compliance and then there's also an additional eight that are having corrective action plans, I can also obtain that for you. I don't have them at hand. [LB390]

SENATOR HARR: Okay. And you don't know how they're out of compliance. [LB390]

MICHAEL BEHM: No, sir, I don't. [LB390]

SENATOR HARR: So they could be exceeding certain...most parts but, for instance, do you know, is Douglas County out of compliance? [LB390]

MICHAEL BEHM: Yes, they are. [LB390]

SENATOR HARR: Okay. And you'd agree with me there they have more guards. The issue is more of a policy issue rather than a standards issue, if you understand that, and if you don't, that's fine. I'll move on. [LB390]

MICHAEL BEHM: Uh-huh. [LB390]

SENATOR HARR: I guess my issue here is--and then I want to move on--is Douglas County is accredited through the American Corrections, correct? [LB390]

MICHAEL BEHM: Yes. [LB390]

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SENATOR HARR: Okay. And that's different from yours, from the state board correction or from the Jail Standards Board, correct? [LB390]

MICHAEL BEHM: Yes. [LB390]

SENATOR HARR: Do you know what the difference is? [LB390]

MICHAEL BEHM: Well, one would be something where you pay funds into...the one that you're talking about, the American Corrections Association, you actually pay a fund, a fee. They will come in and inspect your facility with the standards that they have. If you meet their standards, which some of them are actually more allowable under that procedure versus the current Jail Standards regulations, then they would issue a certificate and your agency is then nationally accredited. [LB390]

SENATOR HARR: Okay. And if there are no jail standards, let me draw a hypothetical. There's a prisoner, says his standards were below a norm; they sue. What would a county attorney have to rely upon if they aren't up to certain standards? I guess my fear is that county attorneys are left there hanging in the wind if they don't have to uphold any sort of standards. [LB390]

MICHAEL BEHM: Well, one of the things proposed in the bill, Senator, is our manual of recommended guidelines and some of the...in front of you, within that bill was proposed, and I can read these off. It's Nebraska Department of Correctional Services, the Fire Marshal's Office, the Police Officers' Association of Nebraska, Nebraska Sheriffs' Association, Nebraska County Officials, League of Municipalities, the Ombudsman's Office would all get together to develop this manual of recommended guidelines for the operation and the government of their own facilities. So I guess to answer your question, each particular county or city, there are actually three city jails which also are currently inspected, would come under the responsibility and authority of that local government. [LB390]

SENATOR HARR: Okay. So if you had guidelines, would there be anyone to certify those guidelines, outside third parties, as we currently have? [LB390]

MICHAEL BEHM: The guidelines would come from, I would assume, by cooperation and corroboration with the agencies that I've just mentioned. Some of these, one of these are...at least a couple of them have something to do with jails right now. That would be the Sheriffs' Association are aware of the standards as well as Nebraska Corrections Service. [LB390]

SENATOR HARR: And I guess my question, is there an outside third body that certified that they're up to the guidelines, not who created them, but who is to certify that jail is

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living up to that guideline as suggested by the parties you mentioned? [LB390]

MICHAEL BEHM: No. No, there's not. [LB390]

SENATOR HARR: Okay. Thank you. [LB390]

MICHAEL BEHM: Welcome. [LB390]

SENATOR ASHFORD: Yes, Senator McGill. [LB390]

SENATOR MCGILL: I'd just like to know how this organizational chart changes in terms of where these employees go, like, because they'll be switched over, or under the oversight of who and...? [LB390]

MICHAEL BEHM: That's a good question, Senator. [LB390]

SENATOR MCGILL: Uh-huh. [LB390]

MICHAEL BEHM: What you see now is a mixed maze of different responsibilities within the agency. If you notice, they are connected, some of them, by lines of communication more than lines of authority, however, you notice Community Corrections Council stands off by its side. Also listed on here, to see the actual organizational chart of the training center, you have to go actually to look at theirs. They're listed on here because we do provide budgetary and administrative support to the training center as well as Community Corrections Council and also the Office of Violence Prevention. Two out of the three are actually housed within my office at the State Office Building. [LB390]

SENATOR MCGILL: Okay, yeah, but... [LB390]

SENATOR ASHFORD: Thanks, Michael. [LB390]

MICHAEL BEHM: Welcome. [LB390]

SENATOR ASHFORD: Let me...go ahead, Mike, and you can step down, and next testifier. But just so everyone understands, and I know many of you have been here before but those who have not, we have a light system that we use which...go ahead next testifier, but we have a light system that provides for three minutes of testimony. When we'd ask you to...when the yellow light goes on, we'd ask you to summarize your comments and then at the red light we'd ask you to cease your testimony. However, we don't count the questions and answers, obviously, as many of you know. But we'd like to move this along. Let me ask, how many testifiers are there on this bill, this particular bill? Okay. I would ask, as you come up, to please not repeat your testimony. Try to...those who are public officials, if you would get together and not say the same thing

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over again. The citizens, obviously, are not here often and that's a different story, but those that are public officials, try to organize your testimony so that we don't repeat ourselves. And with that, why don't we go to the next testifier. [LB390]

LINDA KRUTZ: (Exhibit 4) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Linda Krutz and I am the executive director of the Community Corrections Council. I am here today to testify in support of LB390 and answer any questions the committee may have. I would first like to briefly discuss why the council was created and what it has accomplished in its seven years of existence and will then outline why I feel LB390 transitions community corrections policy in a positive way. In 2003, when the council was formed, the state faced a prison overcrowding emergency and lacked any formal strategy or policy to safely divert offenders from incarceration into community-based supervision. Since its formation, the council has played a vital role in developing a community corrections policy for the state of Nebraska by bringing stakeholders together and promoting cooperation between the executive and judicial branches in the community corrections arena. After several failed attempts to secure funding for community corrections in the 1990s, the council successfully made the case to the Legislature that these programs are important and has secured an annual General Fund appropriation of over \$5 million to support community corrections programs statewide. The council has used this funding to establish and support several key community corrections programs and improve the data infrastructure within the Office of Probation Administration, problem-solving courts, and the Office of Parole Administration. The development of eight day and evening reporting centers, the statewide expansion of problem-solving courts, the Specialized Substance Abuse Supervision Program, and the Fee-for-Service Voucher Program are all evidence of the progress which has been made under the council. The council also engaged community...criminal justice agencies and stakeholders in a collaborative, strategic planning process, which had not occurred previously, and has developed a plan to continue to expand and develop community corrections programs statewide. The council recently submitted a reporting center expansion plan at the request of the Legislature's Sentencing and Recidivism Task Force, which recommends and prioritizes where additional reporting centers are needed. Lastly, the council has been successful in raising the profile of community corrections and educating the public, Legislature about the importance of utilizing evidenced-based practices to safely supervise and rehabilitate offenders in the community. The situation today is very different than 2003. While we still have concerns about prison crowding, a comprehensive community corrections strategy exists which is safely diverting targeted offenders into drug courts, reporting centers, and the SSAS Program in the communities across Nebraska. We have moved from a situation where Probation and the Department of Corrections never discussed community-based programs to one in which these agencies are closely integrated in the supervision of offenders and working together on a number of different programs and initiatives. While the current economic situation has delayed program expansion, the programs have been established and the plans for expansion have been

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prepared and are ready to be implemented. The staff of the Community Corrections Division will continue to perform the research, oversight, and evaluation functions that are important to ensure that progress continues, and will continue to work with both Probation and Corrections on implementation of the council's strategic plan. LB390 recognizes the excellent work that... [LB390]

SENATOR MCGILL: Oh, keep going. Go ahead and finish up. [LB390]

LINDA KRUTZ: ...the council has performed in laying the groundwork and raising the profile of community corrections in Nebraska. We are moving from a period in which the state needed to discuss and create a comprehensive strategy for community corrections in Nebraska to one in which the strategy and policies are developed and are ready for implementation. While a deliberative body representing all three branches of government and criminal justice stakeholders was the perfect mechanism in which to debate and develop community corrections policy, now that the programs have been established the need for an advisory council to promote and develop policy has been greatly diminished. LB390 transitions community corrections policy from the planning stages to implementation and refinement and focuses the resources of the Community Corrections Division on operationalizing the work initiated by the council. Thank you and I'll be glad to answer any questions. [LB390]

SENATOR MCGILL: All right. Yeah, are there any questions? Senator Council. [LB390]

SENATOR COUNCIL: Yes, thank you, Linda. And for those of you who don't know, I serve as one of the two legislative representatives on the Community Corrections Council and have had discussions both with representatives of the Governor's Office and Community Corrections Council about LB390 and my concerns about LB390. Linda, one of your statements suggests that programs have been established so that there's really no need for the Community Corrections Council because now we're just talking operationally. But isn't it true that the Community Corrections Council continues to evaluate and identify and consider other community correction program alternatives? [LB390]

LINDA KRUTZ: Right. There was a ramp-up period with community corrections and then we got funding and then our funding has pretty much stabilized because of what's gone on with the economy. So we have programs in more locations than we've had previously, but we certainly aren't statewide at this point. [LB390]

SENATOR COUNCIL: Okay. And my next question is kind of a follow-up to the question Senator McGill asked of the Crime Commission and is still not clear to me, and maybe you can help enlighten me. Where will the staff, if LB390 is passed and the council itself is eliminated, where will the staff house and what is that chain of command? [LB390]

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LINDA KRUTZ: As I currently understand LB390...I was appointed by Governor Johanns to this position. I was a member of the original task force, and then we were placed within the Crime Commission and at that time Allen Curtis was the director there, and I am a director. I sit on the Governor's cabinet. And we would...it's my understanding at least at this point, unless somebody would see that we need to be somewhere else, that we would be housed...continue to be housed within the Crime Commission. I would no longer be a director. I would be a division similar to the Budget Division or the Jail Standards Division or the Grants Division. So I would answer to Mike Behm. Mike Behm would become my boss. [LB390]

SENATOR COUNCIL: Okay. So under that structure, then the expectation is, is that policy for...community corrections policy would funnel down from the director of the Crime Commission for implementation by the staff as opposed to the process that has been employed successfully? [LB390]

LINDA KRUTZ: Well, we haven't had that discussion but that's certainly a possibility, I suppose. You know, we have people that are experts, I guess, in this field. I've been in the field a long time, my policy analyst has been in the field a long time, so I would think that it would be a collaborative thing, that it wouldn't be a top-down kind of thing, that we would work as a team to continue to expand community corrections in this state. [LB390]

SENATOR COUNCIL: Okay. So in terms of budgetary impact, essentially what LB390 would affect would be the costs of convening the council as it is presently constituted. [LB390]

LINDA KRUTZ: Yes. And budgetarily, the Governor has recommended a 10 percent cut to my operations budget, which is about \$31,000 this year. [LB390]

SENATOR COUNCIL: Okay. So my recollection is about \$12,000 of the reduction is for the cost associated with the regularly scheduled meetings of the council. [LB390]

LINDA KRUTZ: Right, somewhere between \$10,000 and \$20,000, depending on how many people are present and... [LB390]

SENATOR COUNCIL: Okay. Okay. Thank you. [LB390]

SENATOR MCGILL: All right. Any other questions for Linda? No. Thank you very much. Are there other proponents here for LB390? Any other proponents? Going once, going twice. Okay, anyone here in opposition to LB390? John? [LB390]

DAN WILLIAMSON: Who's going to fight first. (Laughter) [LB390]

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SENATOR MCGILL: Yeah, this is kind of the next on-deck spot. So as people come through, go ahead and funnel up to that area. [LB390]

DAN WILLIAMSON: Good afternoon. I'm Captain Dan Williamson with the Sarpy County Sheriff's Office, and I'm here representing the Nebraska Sheriffs' Association in opposition to this bill. Basically, what we're really concerned about is the elimination of the jail standards. Right now, we have meaningful standards by statute. We have an inspection process. We have an information source that all the jails can go to. And by eliminating this and having recommended guidelines, it's going to put virtually every jail in this state at odds because they're going to be asking themselves where do we go now, what do we do now. The inspection process over the years has been very helpful on identifying problems with jails, either lack of conditions or physical plant, those type of things, in developing corrective action plans. It has been very helpful. The jail standards people are probably some of the most knowledgeable that we've dealt with. But I think other sheriffs are going to be talking about ACA accreditation, those type of issues, but I feel that by doing away with standards it's going to open a lot of counties up to potential liability, maybe not today, maybe not tomorrow. But one, two years down the road, without binding laws that say you will do this in your jails, we're going to be forced to look at other organizations or we're going to be forced to maybe look at accreditation, which is very, very expensive. But what's going to happen is you're going to see virtually every county attorney's office in this state get involved in jails. They are the ones where jail issues are going to have to be brought to. They're the ones that have to research case law, keep the jails up to date, plus, in a sense, they're going to have to review and certify policies for every jurisdiction. So to keep it in perspective, I know what it was like in the '70s when we didn't have standards and when the federal courts stepped in and had the hands-off doctrine and said, well, look, you guys aren't doing your job, we're going to tell you what you have to do. And I think with jail standards, what they've done over the years, they've helped this state tremendously. They've helped reduce potential litigation in these jails. And they were something by law we could fall back on and get advice. Thank you. [LB390]

SENATOR ASHFORD: Thanks, Dan. [LB390]

DAN WILLIAMSON: Any questions? [LB390]

SENATOR ASHFORD: Yes, Senator Council [LB390]

SENATOR COUNCIL: Thank you. And I appreciate your comments with regard to the elimination of the Jail Standards Board and what it opens up, and you alluded to it in your comments, not all of the county jails share the same opinion of the Jail Standards Board but it has served a purpose, particularly in terms of complaints about treatment of inmates who are housed in those facilities, which gives rise to the concern and the question I have. And I apologize, I can't remember the bill number, but there's another

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bill that's pending before us to eliminate the jurisdiction of the Ombudsman's Office to address complaints, many of which arise from the county jails. And I guess I'm asking your opinion of what kind of impact that will have on county attorneys if you eliminate the Jail Standards Board as well as eliminating what's viewed as an independent and impartial review of conditions in the jails? [LB390]

DAN WILLIAMSON: The impartial review, whether it be of the Ombudsman's Office or whatever, is one thing, but I think that you definitely have to have a third party, disinterested party, to do your inspections, to do some of these issues. Because if you do not have that, where are you going to ultimately end up? You're going to end up before a district court or in federal court. And right now we have a mechanism by which sheriffs can say, hey, I have an inmate, he's grieving this, do we have a major issue with this? We always go back to the standards. Now the standards don't cover everything that's known but as it comes up. I know the jail standards has assisted Sarpy County over the years on issues with dealing with the inmate's classification, strip search, those type of things that have definitive case law. [LB390]

SENATOR COUNCIL: Well, and for my colleagues' benefit and the audience benefit, the bill I'm referring to is LB270, which would remove from the Ombudsman's Office jurisdiction, jurisdiction to receive and investigate complaints from the county jails. And I think it's very problematic to have LB390 and LB270. If the Jail Standards Board is eliminated and the Ombudsman's jurisdiction is withdrawn, where do the inmates, their families look to for some objective review of the grievance or complaint or the condition that exists? [LB390]

DAN WILLIAMSON: Well, that's a very good point and I agree with you on that. But once again I'm going to go back and indicate, where is this all going to head? It's going to head to court. [LB390]

SENATOR COUNCIL: Court. Exactly. [LB390]

DAN WILLIAMSON: And then once again many of your county attorney's offices are not geared to handle jail litigation. They're not geared to do that type of research. And you're looking at a tremendous amount of money statewide for these offices to get on board, and they don't get involved in the day-to-day jail issues but they're going to have to if these are eliminated. [LB390]

SENATOR COUNCIL: Thank you. [LB390]

SENATOR ASHFORD: Thanks very much. Next opponent. [LB390]

JOHN KREJCI: (Exhibits 5, 6, and 7) I have three different things. Thank you, Senator Ashford, and good afternoon, Senator McGill, Senator Council, Senator Coash. My

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name is John Krejci, K-r-e-j-c-i. I speak as a concerned citizen but also as a member of the Interchurch Ministries prison committee of Lincoln, of Nebraska, and also as a part of the "Nebraska Criminal Justice Review," which is an advocacy group for prison reform. And the three things I've passed out to you, one is a newsletter of the Community Corrections Council, for your information; another is an article I wrote a couple years ago supporting community corrections and wondering why Kermit Brashear was not reappointed. It's a little edgy but Senator Brashear, it was kind of a bad thing for him. I've attended almost every Community Corrections Council meeting since 2005 or so, and I'm really interested in community corrections. I've written numerous articles on that. I'm a retired sociology social work professor, and this is something that's really, really important to me, community corrections and reform of our criminal justice system. And I've seen the Community Corrections Council interact and it's one of the best examples of how government should work. They have dialogued, established innovative programs, and I can say without reservation the council is a classic example of how intergovernmental agencies should interact. There's a cross-fertilization of ideas, civil discourse, efficiency of operation, spirit of cooperation by numerous agency heads. They know what the others are thinking, the sheriff and the judges and probation, parole, corrections. It's really marvelous. And Senator Brashear was part of that because he was really committed to community corrections. Agency heads, legislators, judges, law enforcement personnel, mental health personnel, others have been exemplary. This is shown by the excellent programs that they've established. And the unpaid volunteers, maybe \$10,000 a year to their meeting, so this to abolish it isn't going to save any money. So the main program is nonviolent drug offenders were put on probation, received drug and alcohol counseling, intensely supervised and required to report to reporting centers located throughout the state. It's kept over 300 people out of jail. Multiply that by \$30,000 a year and that's a big chunk of money. And it also has kept people with their families. I don't have to tell you how important community corrections is. They have a sophisticated tracking system so we know that they're being successful and I don't know why the Governor wants to abolish it. It just doesn't make any sense. They're trying to get into DWI, trying to get into aftercare, and I think that would be...there's wonderful staff people... [LB390]

SENATOR ASHFORD: John. John, here's what we're going to do. [LB390]

JOHN KREJCI: I know. [LB390]

SENATOR ASHFORD: I know and you're here and you're always great. [LB390]

JOHN KREJCI: And you got my stuff and you'll read it. [LB390]

SENATOR ASHFORD: And I got your stuff and you're always great. We appreciate you being here. I just...we've got a big room so I'm going to ask you to sum up your comments. And we always appreciate you being here. [LB390]

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JOHN KREJCI: Thank you very much. I appreciate your tolerance. So it's really one of the best state programs and the best investment of money. And I would say, as I did in my article, Governor, what are you thinking? And I'm sure, Senator Ashford, that you're not enthusiastic about introducing that, I hope you aren't. I ask the committee to amend this bill. (Laughter) My wife hates it when I say I know what you're thinking. [LB390]

SENATOR ASHFORD: Who is that? Oh, me! Oh, thanks, John. Yeah. [LB390]

JOHN KREJCI: I ask you to amend this bill and don't touch the Community Corrections Council. Thank you very much. [LB390]

SENATOR ASHFORD: John has license to say things like that; nobody else does. (Laughter) Thank you very much. [LB390]

JOHN KREJCI: Yeah, at my age, you know, my graying hair. [LB390]

SENATOR ASHFORD: Well, it's age and all that stuff. [LB390]

JOHN KREJCI: Thank you very much. I appreciate it. [LB390]

SENATOR ASHFORD: Thank you. All right, next opponent. [LB390]

KEVIN STUKENHOLTZ: Good afternoon. I guarantee you I won't go over my time limit. Mr. Williamson covered most of the basics. My name is Kevin Stukenholtz. I'm currently the Saunders County Sheriff. I retired as a State Patrol captain and approximately two years ago Saunders County completed the construction of a 155-bed correctional facility. Jail standards was invaluable in giving us guidance and direction as we proceeded with that. Should LB390 pass in its current form and we have no...leaving our facility and all the other facilities in this state with no third-party oversight, you would be faced with following a guideline with no inspection or accountability or going out and obtaining an accreditation. While the accreditation is based on how big your facility is and the number of days that it takes to become accredited, it would range in the area of \$20,000 to \$25,000. Some facilities, by the nature of their construction and how old they are, wouldn't be able to comply if they tried. So I would urge this body to look at this very carefully. It may save the state under \$300,000 today, but I think the litigation in the future is going to be catastrophic. Do you have any questions? [LB390]

SENATOR ASHFORD: Thanks for your comments? Any questions? Thank you. Thanks a lot for coming. [LB390]

KEVIN STUKENHOLTZ: Thank you for your time. [LB390]

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MIKE THEW: Good afternoon. Members of the committee, my name is Mike Thew. I'm a deputy county attorney for Lancaster County. I'm testifying in opposition to LB390 for the reasons that most of the other opponents have stated, that being the call for the abolition of the Jail Standards Division. I have been with the county attorney's office for 32 years and for almost all of that time one of my primary responsibilities has been to represent the Lancaster County corrections department. I have tried dozens, if not more, cases in federal district court: general condition suits, class action suits, and numerous individual suits regarding all sort of different conditions in the jail. I can tell you from experience--and I hope I will address some of the issues that the committee members have raised in the process--that jail standards is invaluable. In at least two or three of our really, really big cases, they have actually provided us expert testimony. They've appeared as expert witnesses on behalf of the county. They've assisted us through litigation. When they couldn't provide the expertise themselves, they've assisted us in finding the necessary experts, credible national experts to provide the information, the testimony we needed. In addition to that, we have used their annual inspection reports in virtually every case I've tried to establish that we are very well aware of the conditions that are being challenged, we address them on an ongoing basis, and that we have successfully addressed them, that a third party, noninterested agency has determined that we have addressed them sufficiently to meet the requirements of the constitution. Without those kinds of things available to county attorneys, it's going to be impossible to defend the lawsuits that are going to come. And the fact of the matter is, most county attorneys' offices in this state do not have the resources to do this on their own. My yellow light is on. To summarize, I can't believe that the cost of...if you look at the expertise that is centralized in the Jail Standards Division here and available to the whole state at a cost of \$300,000, and compare what it would cost the taxpayers of this state to get that...to replicate that on an individual basis for every jurisdiction in this state that has a detention facility, the costs would be absolutely staggering, and that's even before you get to defending the lawsuits. If you have any questions, I'll be happy to try and answer them. [LB390]

SENATOR ASHFORD: Thanks, Mike. And, yes, Senator Coash. [LB390]

SENATOR COASH: Thank you, Chair. Mike, can you give me an idea of the types of...the nature of the lawsuits that you've had to defend? What are...I'm just trying to get my mind around, you know, I understand what you're saying about the standards and they help you defend them, but what's the nature of what you're trying to defend against when you've done these cases? [LB390]

MIKE THEW: Well, it depends on the nature of the case that's brought. The very first case that I had to try out of law school was a general conditions case. The plaintiffs alleged that every condition in the Lancaster County jail was constitutionally insufficient, so that was space, light, noise, medical care, library facilities, recreation, all of the things that are addressed in the standards. And that's why the standards, if you look at the

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standards there are chapters, each chapter, visitation, legal materials, things like that, and interestingly one of the things I learned, I mean you talk about learning experience for a new guy just out of law school, it was amazing. But one of the things I learned was that that lawsuit was really part of a strategy by a national jail reform group who hoped to get enough relief from that lawsuit to justify a large attorney's fee award that it would then use as seed money to bring similar lawsuits against other jails in the state and eventually bring a class action suit challenging the sufficiency of every local jail in the state of Nebraska. But we have, for example, when we first started using female correctional officers on the floor in our jail, we got two or three lawsuits challenging that. We've had challenges to the sufficiency of our medical services, to the sufficiency of our legal materials that are available, the recreational facilities, the visiting. I mean we've had them all over the years. [LB390]

SENATOR COASH: Okay. Thank you. [LB390]

SENATOR ASHFORD: Thanks, Mike. [LB390]

MIKE THEW: Thank you. [LB390]

SENATOR ASHFORD: Thanks for all your years of service. Next opponent? [LB390]

AMBER MULBERRY: Afternoon. My name is Amber Mulberry and I have worked in the field of corrections for nearly ten years and I'm currently the director of the Gage County detention facility, and I'm opposed to LB390 and eliminating jail standards. Jail standards has created uniformity across the jails in the state of Nebraska, while still allowing facilities to operate independently based on physical design, staffing, and particular needs, as long as they fall within the current standards. This uniformity has decreased successful litigation in our court system. Eliminating these standards would truly increase litigation and caseload for our district court judges. Also having the effect of potentially replacing judges in areas would increase costs to the state. Additionally, county attorneys who are unable to defend the county, for whatever reason, may turn to the Attorney General's Office for assistance, once again increasing their caseload and potential costs to the state. I feel there is no need to recreate a manual on jails. The old saying, don't reinvent the wheel, is applicable in this situation. If you feel the standards need updated, this surely can be accomplished by jail standards consulting with jails and sheriffs' offices in the state. Wasting time and money recreating a whole new policy manual on jails, where one already exists and has proven successful over the last 30 years, is clearly regress and a waste of resources. LB390, page 16, line 14, why would we create a manual or make updates to the system consulting the Nebraska Department of Corrections? Although the NDOC does face similar situations, they're an entire different entity with physical design, staffing, and mandates. If updates are needed, address the administrators and individuals working in the jails to assist in the process, would give far better insight. I have to think that we create law to fix areas

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which have not already been addressed. We modify law to make improvement in areas which have not been considered before or need adjustment due to changing times. The state can save money by not recreating a law...oh, I'm over. [LB390]

SENATOR ASHFORD: No, no, you have... [LB390]

AMBER MULBERRY: Okay. [LB390]

SENATOR ASHFORD: You're still on yellow. [LB390]

AMBER MULBERRY: The state can save money by not recreating laws to cover positions which were already being covered. If the state is looking for ways to save funding, then eliminate individuals or agencies which were created to oversee areas that have already been covered by law or other agencies, for example, the position in the Ombudsman's Office which investigates jail complaints where jail standards had already been covering the area. I want to leave you with this final thought. Thirty years of jail standards has brought this state decreased liability, better designed facilities, increased security, and improved training. We do no justice to the citizens of the state by eliminating a division that has a proven track record. [LB390]

SENATOR ASHFORD: Thanks, Amber. Any questions of Amber? Thank you for coming up. Next opponent. [LB390]

MICHELLE SCHINDLER: (Exhibit 8) Hi. Give you some stuff. I didn't make enough copies for everyone. I'm Michelle Schindler and I'm the director of the Lancaster County Youth Services Center, or what you may know of as juvenile detention. Perhaps you're not aware or may be aware, LB390 doesn't specifically indicate whether or not, with the abolishment of jail standards, you also want to abolish the standards for juvenile detention facilities. I am assuming that that is implied. I am in opposition specifically to the abolishment of jail standards and the juvenile detention standards. There's four detention facilities throughout the state. Lancaster County, we currently contract with 26 counties throughout our state, as well as the Office of Health and Human Services, Office of Juvenile Services, to ensure that we provide secure care custody and provide for their medical, mental health, and welfare needs while they're going through the court or they're waiting for their dispositional placement. These standards for juveniles are different than they are for adults. I think it's incumbent upon you to ensure that the four facilities throughout the state protect the public interest of providing security as well as provide for the welfare of the children that are in these facilities. There's no minimum standard or no minimum in statute for the age of kids that come into detention. I've had a 10-year-old in detention who was in 6th grade, and I can hold kids up to being 19 years of age. I also hold youth who are in the adult district court or county court system, so I have a range of youth that I need to make sure are taken care of while they're waiting for the court to go along. Jail standards has been invaluable to providing training

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for all of us free, reviewing our training manuals regarding specific custodial issues related to kids. Although you reference in this bill the manual, I've outlined in my narrative specifics that I did not see in 47-01 (sic), specifically medical and mental health, issues such as that, that you really need to think about. Prior to LB390 and currently, I believe that rather than limiting standards for custodial care of juveniles, you should be expanding them and you should be evaluating the standards for which custodial care needs to take care of our kids in custody. Thanks. [LB390]

SENATOR ASHFORD: Any questions of Michelle? Thank you. [LB390]

MICHELLE SCHINDLER: Thanks. [LB390]

SENATOR ASHFORD: Next opponent. Afternoon. [LB390]

WILLIS LUEDKE: (Exhibit 9) Good afternoon. I'm Willis Luedke, L-u-e-d-k-e. I'm Saline County Commissioner. I serve as a member of the NIRMA board of directors, and I'm on the state of Nebraska Jail Standards Board. Wearing several different hats this afternoon, I want to point out, though, that I'm speaking in opposition to LB390 and my comments are strictly my own viewpoints. I think it's been a foregone conclusion that the responsibility of jail standards is the implementation and administration of the jail standards program. Many of their activities I have listed, amongst those the jail inspection, the review and plans of new structures and remodeling of prison facilities. I've been involved in county government as a county commissioner for the past 12 years. During that time, my involvement has included the overseeing of the jail operation in Saline County by doing quarterly jail inspections as a commissioner. Also during this time, Saline County has been involved in the construction of a 48-bed jail and law enforcement center and we also put on a 35-bed addition to our original facility. I can speak firsthand that the supervision which has been provided by the Jail Standards Division in the day-to-day operations and the construction of the law enforcement facility and its addition has been a very valuable source to Saline County. Through their assistance, we've been able to stay in full compliance with the standards that have been established by the state Legislature. It has been mentioned LB390 is going to provide for a manual. We currently have a set of standards that have been developed. Some of those standards have been developed back more than a century ago and have been improved and brought up to date in order to stay in compliance. Most county officials, including myself, are not experts in the administration and supervision of jail facilities. Therefore, we need the expertise of the jail standards staff to provide the necessary support for running our local jails. Without adequate standards and meeting these standards, counties will be subject to lawsuits and a higher cost of liability coverage. As a member of the board of directors from NIRMA, we provide liability insurance to many of the counties that have jails, and I can appreciate what the cost of liability insurance is now and I fear for what it would be in the future if we did not have the jail standards and their supervision. The jail standards staff has helped Saline

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County operate an efficient jail which meets the established standards, providing for the welfare of the staff and inmates who are housed in the facility. We house state prisoners for the state of Nebraska and my feeling is, in the best interests of the state of Nebraska, that we continue with the state standards board and the present standards. The responsibility would fall on the state. Also, the responsibility that is going to fall on the counties in administering a jail or a law enforcement facility are outside of our realm. Are there questions? [LB390]

SENATOR ASHFORD: Thanks, Willis. Thanks for your comments. Any questions of Willis? Thank you, sir. And we do have your comments so... [LB390]

WILLIS LUEDKE: Okay. [LB390]

SENATOR ASHFORD: ...as we do most everyone that's testified. We have also written comments from many of you so we have those in the record. [LB390]

WILLIS LUEDKE: Thank you. [LB390]

SENATOR ASHFORD: Next testifier. [LB390]

DUANE BOND: (Exhibit 10) Thank you. Duane Bond from Buffalo County Sheriff's Department. I come on behalf of Sheriff Miller. He sent a letter along. I would like to read that to you. I'll try not to take too long here. Dear Senator Ashford and committee members: I would like to take this opportunity to express my opposition to LB390. This bill would eliminate the Nebraska Jail Standards Board and, ultimately, Nebraska jail standards inspectors and staff. I feel that this would be a huge step backwards in providing statewide standards for county and city jails in Nebraska. The current jail standards that we have in place serve the jails and inmates well. They provide the guidance needed to keep counties and cities from facing litigation as a result of inadequate or substandard conditions and policies. The Jail Standards Division also provides a wealth of information and support for the jail administrators in the state with problems that arise in interpreting and standardizing very complex issues. These include religious diets, practices, medical problems, and other very unique issues that we face in running today's jails. The Nebraska jail standards staff has been very involved in helping to plan and design new jails in the state. Buffalo County is in the middle of building a new judicial center that includes a 205-bed jail. The jail standards inspectors have been involved in the planning and programming and processes of this new jail, and have saved Buffalo County thousands of dollars in both prearchitectural programming and design by eliminating unnecessary and costly items and mistakes in jail construction. I understand that the state budget is of huge concern and must be balanced. With that in mind, I would propose that we charge the inmates in this state a booking fee of \$10. This fee would be collected by jails and submitted to the State Treasurer to be used to support the cost of the Jail Standards Division of the Nebraska

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Crime Commission. The county jails of Nebraska book in approximately 55,000 inmates per year. With inmates who are indigent, we would have some with no ability to pay, and I recognize that. The budget that we would support is approximately \$300,000 and I feel that we can generate the required revenue to have this as a no-cost item to the state. Inmates always come up with money for other things like phone calls and commissary. Why not have them help support the cost of the regulatory side of jails? The regulations exist for the safety and security of the inmates, as well as the staff. A few comments of my own and that is Buffalo County, in our small jurisdiction, books in about 2,500 inmates per year. They spend approximately \$71,000 per year in commissary and phone calls alone. I think it's time to let them help support this program and jail standards is our partner in providing constitutional jails in Nebraska. Thank you. [LB390]

SENATOR ASHFORD: Thanks, Duane. Does your new jail have a juvenile, staffed, secure facility? [LB390]

DUANE BOND: No, sir. [LB390]

SENATOR ASHFORD: Okay. Do you have a separate juvenile...are you one of the four? [LB390]

DUANE BOND: No. [LB390]

SENATOR ASHFORD: Okay. All right. I couldn't recall who the other two were but North... [LB390]

DUANE BOND: We're very restrictive on our juvenile holds and monitored by jail standards there too. [LB390]

SENATOR ASHFORD: Okay. Thanks very much. [LB390]

DUANE BOND: You're welcome. [LB390]

SENATOR ASHFORD: Thanks, Duane. Next opponent. [LB390]

TED POCWIERZ: My name is Ted Pocwierz. I'm the corrections director for Platte County. I've been involved in corrections for ten years as a corrections director, another ten years working in another county. I've been with two different counties when they built two new jails. Jail standards has been very supportive of us and, without them, our facilities probably wouldn't be as good a place to house inmates as we have today. Also, I've been to several different trainings with the National Institute of Corrections and somebody brought up the fact that there's 17 states without jail standards. There's also 32 states that have jail standards. One of the sheriffs that was in attendance at the class

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I attended for small jail administrators asked NIC if they could get a copy of some policy jail standards. They brought out the Nebraska jail standards. That should mean something to be said about what we have. Another thing, I've worked very closely with jail standards is training. I've been working with jail standards and certified by jail standards to teach the basic jail school. It's a 40-hour school. And without jail standards, there would be nobody to run the school, oversee it, or certify people. The only reason we don't have lots of lawsuits in Nebraska is because of the training. Without training we would go back to the good old boys and you'd run it by yourself. It was brought up that a manual shall be developed in consolation (sic) with the Department of Correctional Service, the League of Nebraska Municipalities, Nebraska Association of County Officials, the Nebraska County Sheriffs' Association or its successor, and the Office of the Public Counsel, the Police Officers' Association of Nebraska and/or its successor, and the Fire Marshal. I've worked with many of these people. The Department of Correctional Services are an asset to us but they do not know what county jails have. What they run is a state correctional, go by federal, and the smaller jails, each county has something a little different. The League of Nebraska Municipalities and Nebraska Association of...the League of Nebraska Municipalities and the County Officials Association, they have agendas of their own. They are too busy to try and work on one little segment like the jail. They have worked with us and worked with the jail standards, but they've also used jail standards for their guidance. Another thing, the Office of the Public Counsel, when they were allowed to start working with the jails we had several dealings with them and they were all resolved through the fact that we had to follow the jail standards and the inmates didn't want them. The Fire Marshal works very close with us. Without the Fire Marshal's Office, we would probably be in deep trouble in our facilities. In conclusion, I would like to say as the past-president of the Nebraska corrections directors association for five years, I feel that without jail standards we would be backing up the Nebraska jails about 50 years. Thank you. [LB390]

SENATOR ASHFORD: Thank you, Ted. Thanks for all your years of service. Next opponent. [LB390]

JON EDWARDS: Chairman Ashford, members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials. We're here today in opposition to LB390 and I certainly won't belabor the issue any more than it needs to be. You've heard all the technical information from the law enforcement and from the county attorney and they hit on all the issues and concerns that they have. Those issues were brought forward to our board along with concerns that county board members have across the state as related to this issue, and based on that information our board took a position of opposition to this. I think if you just look at it, just from a common-sense point of view, and you look at the language and your changing rules to guidelines, that seems very problematic in my mind when you're dealing with jails and housing of inmates and the concerns that go along with safety for both law enforcement and for the inmates in the jails. We need to be very

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careful with this issue. And certainly we are not unmindful of the fiscal issues that are before all of you folks and the political subdivisions as well, but we would just certainly recommend that we be very, very careful in what we do here. I would like...Senator Harr had brought a point earlier with concern regarding Douglas County, specifically, and related to their concerns, and they're out of compliance right now apparently with some issues dealing with the jail standards as they currently are. And certainly it would be our suggestion from our association's point of view that if we can amend this language somehow to...if Douglas County is accredited with a federal organization, that should stand in compliance within the state, so we'd be certainly willing to entertain or help work through that issue. But we certainly are opposed to removing the standards as they currently are. We think we've just come too far to walk away from that. So with that, I'll conclude my testimony. [LB390]

SENATOR ASHFORD: Okay. Thanks, Jon. Any questions of Jon? So your suggestion is that Douglas County, we separate them out from the... [LB390]

JON EDWARDS: You know, my...I think what I would suggest is that if any county, if any county is accredited through either jail standards... [LB390]

SENATOR ASHFORD: No, I get it. I was being half facetious. (Laughter) [LB390]

JON EDWARDS: Gotcha. And I understand how that... [LB390]

SENATOR ASHFORD: That goes lots of places and I...but... [LB390]

JON EDWARDS: I understand how that goes in this body. [LB390]

SENATOR ASHFORD: Yeah. Thanks, Jon. [LB390]

JON EDWARDS: I get that. [LB390]

SENATOR ASHFORD: Thanks for your comments. [LB390]

JON EDWARDS: Oh, no problem. Thanks. [LB390]

SENATOR ASHFORD: All right. Any other opponents? Okay. How many other opponents do we have today? Okay. Come on up. Good afternoon. [LB390]

DENNY MACOMBER: (Exhibit 11) Good afternoon. My name is Denny Macomber, M-a-c-o-m-b-e-r, and I am speaking in opposition to LB390, and my comments are strictly my own viewpoint. I wanted to address one issue with you all and that is the notion that this...the jail standards are an unfunded mandate on jails in the state. I certainly think that over the last 30 years the Jail Standards Board has worked with jails

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to...and with local jurisdictions to assist them in providing constitutional housing for people who are housed or who are held in custody. One of the arguments currently that is related to jail standards has to do with the fact that jails who are in compliance with Chapter 15 standards cannot overcrowd their facilities, and the notion is that if they are allowed to...if they're not allowed to overcrowd their facilities, that limits their ability perhaps to hold extra federal prisoners or it would result in costs that would result from housing their prisoners offsite. I'd like to make it known that in the 30 years that jail standards has been in effect, Jail Standards Board has never forced a local jurisdiction to build a jail. The Jail Standards Board and their staff have assisted, actually, those jails in building constitution...or those local jurisdictions in building constitutional jails that would not result in lawsuits. I certainly think over the years the Jail Standards Board has probably saved these local jurisdictions millions of dollars in building costs and in litigation costs, and certainly when you look at the possible consequences of this bill there certainly will be a litigation cost associated with this if the jail standards are eliminated. The costs will be, like Mr. Thew said, in the county attorneys' offices. The costs will also be in construction. Certainly the jail standards staff has eliminated millions of dollars of excessive equipment and fixtures in facilities that have been built in this state over the last 30 years, and there have been, I think, 34 different facilities built in this state in that time. Additionally, not having jail standards limits their ability to hold federal prisoners. The federal marshals and ICE, both of their sets of standards are fairly consistent with ours and, in fact, ICE's are a little stricter than ours, but meeting our standards allows these jails to house these prisoners for the feds and make counties really quite a lot of money. I don't want to take a lot of time but I did want to address that. I have put together a letter of information plus some other information on why jail standards is important for the taxpayers of this state and I want to just close by saying that jail standards does a couple things. It provides a framework so that jails and local jurisdictions can do this on their own. It provides assistance when they have questions. It helps them avoid excessive costs when they decide to build. And it allows them to do a good job of taking care of people, because ultimately, when we're dealing with inmates in jail, that's the issue--taking care of people. And if you have any questions, I'd be glad to answer them. [LB390]

SENATOR ASHFORD: Any questions of Denny? Thank you, Denny, very much.
[LB390]

DENNY MACOMBER: Uh-huh. [LB390]

SENATOR ASHFORD: I think we're at...is this our last opponent? [LB390]

DANIEL EVANS: (Exhibit 12) Thank you for your time today. For the record, my name is Daniel Evans and I'm here on my own behalf, in opposition to LB390 with respect to county jails and the Jail Standards Board. Of the 50 constitutional issues relative to adult detention, I'll be focusing my opposition to LB390 regarding jails to just 1 of those

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issues, that being facility staffing. State jail standards went into effect in August 1980, and it took four years to identify the approximately 120 jail facilities in the state and conduct those initial inspections. Jail standards initial inspection records confirm that as recently as 1984 at least 20 of those jails were operating in Nebraska without any staff, no jail staff whatsoever. Another 18 jails were confirmed to be operating with insufficient staff and inadequate inmate supervision. In the absence of jail staff, there was virtually no emergency procedures in these jails, including security, fire safety, and medical care. After business hours or during weekends and holidays, the sheriff or chief of police simply locked up the courthouse, the jail, or the station and went home, leaving the inmates on their own in the building for hours and days at a time. In the absence of state jail standards and the Jail Standards Board, the state statutes 47-101 through 47-205, as specified in LB390, were in effect at the time and clearly did not require local governing bodies to staff their jails and provide inmate supervision and emergency procedures. Moreover, the federal case law established in 1971 and 1973 in the two Hamilton v. Love cases did not prompt local governing boards to fund jail staffing. When jail standards did become mandatory, 23 of those 38 jurisdictions decided to close their jails rather than budget for the required staffing and to comply with state jail standards. One county official advised me that the main reason they closed their county jail is it was more than a day or two before they found the inmate who had hanged himself and it was discovered by the local officials. All levels of government must consider the liability involved in such cases and the requirements of government to operate constitutional jails and juvenile facilities in this day and age. The record of how state mandated standards has minimized county exposure to such liability through its inspection and enforcement program of the 75 facilities currently in operation should also be considered. Since the Hamilton v. Love cases, there have been 137 follow-up cases tried by the federal courts specifically regarding the constitutionality of detention facility staffing and inmate supervision. Nineteen of those cases have been setting legal precedents for the state of Nebraska since the '70s. The passage of this bill and corresponding statutes will not enact a legal requirement that would force local governmental subdivisions to provide adequate staffing of their jails, based on history. [LB390]

SENATOR ASHFORD: Daniel, I'm going to ask you to conclude your comments. [LB390]

DANIEL EVANS: Okay. [LB390]

SENATOR ASHFORD: Go ahead and if you want to summarize. [LB390]

DANIEL EVANS: All right. The elimination of jail standards and its oversight as proposed in this bill, in a time of increasing jail populations, more detention of juvenile, violent, mentally ill inmates, skyrocketing costs of medical care, and more public scrutiny is a disservice to the county and municipal governments. It is likely to return the

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county jails to the bottom of the list for funding, creating unsafe conditions for staff and inmates, compromising public safety, allow for increased institutional violence, discontinued constitutional practice, and a dramatic increase to government entities exposed to successful litigation. [LB390]

SENATOR ASHFORD: Thank you, Daniel. Any questions of Daniel on these matters? Thank you, sir. Any other neutral testifiers on...do you want to...you're on this? Okay. [LB390]

MARSHALL LUX: Good afternoon, Senators. My name is Marshall Lux, L-u-x. I'm the Ombudsman for the state of Nebraska and I wanted to testify in a neutral capacity on LB390 very quickly. Senator Council has already made the point that I wanted to allude to, and that is in relation to the jurisdiction that the Ombudsman's Office has over complaints that come from local jails. Back in 2008, the Legislature passed LB467, which came through this committee. It was introduced by Senators Chambers and Dwite Pedersen, and one of the things that that bill did was to create jurisdiction in our office to deal with complaints from local jails. We have been doing that now since mid-2008 and we've had hundreds of complaints over that period of time. But what I want you to be aware of is that in connection with the LR542 process, there is another bill in now, LB270, which would eliminate our jurisdiction. [LB390]

SENATOR ASHFORD: And I think that's in the Executive Committee's jurisdiction and Senator Council has alluded to that. [LB390]

MARSHALL LUX: Correct. And I wanted to make sure that the committee was aware of that point because if the question is independent oversight of local jails then you could end up with a situation at the end of the session where both pieces, both the jail... [LB390]

SENATOR ASHFORD: Yeah, and we're aware of that bill, Marshall, and I appreciate your bringing it up, and we'll be following that progress as well. [LB390]

MARSHALL LUX: Okay. Thank you. [LB390]

SENATOR ASHFORD: Thanks, Marshall. [LB390]

MARSHALL LUX: Okay. [LB390]

SENATOR ASHFORD: Thanks for your good work. [LB390]

SENATOR COASH: Sir. [LB390]

SENATOR ASHFORD: Yes, Senator Coash. [LB390]

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SENATOR COASH: Thank you, Chair. A question for you, Marshall. How many...do you have dedicated staff to inmate complaints in your office? [LB390]

MARSHALL LUX: I do. Yeah, I do, yes. [LB390]

SENATOR COASH: Okay. Out of how many...out of your staff, how many dedicated staff do you have to that? [LB390]

MARSHALL LUX: Three. [LB390]

SENATOR COASH: Three? [LB390]

MARSHALL LUX: Uh-huh. [LB390]

SENATOR COASH: And that's out of how many ombudsmen? [LB390]

MARSHALL LUX: Well, we currently will have...let's see, there are eight of us all together. [LB390]

SENATOR COASH: Eight of you? [LB390]

MARSHALL LUX: Uh-huh. [LB390]

SENATOR COASH: And three of the eight are... [LB390]

MARSHALL LUX: Right. Right. [LB390]

SENATOR COASH: ...are completely dedicated to inmate... [LB390]

MARSHALL LUX: That's correct. [LB390]

SENATOR COASH: Sorry. Thank you. [LB390]

SENATOR ASHFORD: Thanks, Senator Coash. Thanks, Marshall. [LB390]

MARSHALL LUX: Thank you. [LB390]

SENATOR ASHFORD: Ellen. Okay, I think this is the last testifier. [LB390]

ELLEN FABIAN BROKOFSKY: (Exhibit 13) Chairman Ashford, members of the Judiciary Committee, my name is Ellen Fabian Brokofsky, B-r-o-k-o-f-s-k-y. I am the State Probation Administrator and am employed by the Nebraska Supreme Court. I am

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here neutral to LB390. I want the committee to know the Supreme Court's position on this issue, but also I want you to know we are currently having dialogue with the Governor's Office to resolve our concern. The concern: an unusual delegation of legislative authority which has resulted in the judicial branch being required to seek approval from the executive branch to spend funds. The solution involves two requests that I make today. First, amend LB390 by deleting the phrase "in consultation with," which pertains to consultation between the Supreme Court and, under LB390, the newly formed Community Corrections Division. Second, support efforts to transfer appropriations currently used for programs Probation and the courts have implemented successfully, transfer those funds from the Crime Commission directly to the Supreme Court. As you know, the Legislature has the power of the purse. Like the rest of state government, the Supreme Court follows the regular process of submitting a budget request and then coming to the Legislature's Appropriations Committee to request funding. The Legislature, in turn, deliberates and determines the spending level for each biennium. That is not the process used for funding problem-solving courts and community corrections programs within Probation. In that process, the Legislature sets the spending authority for these programs, but the funds needed to use the spending authority reside within the Community Corrections Council. Whether intended or not, the phrase "in consultation with" contained in Sections 2 and 5 of LB390 has resulted in the current practice of the judicial branch being required to receive approval from the council in order to have access to the funds. LB390 further strengthens executive branch control and exacerbates this problem in that the Supreme Court's ability to continue with its successful probation and problem-solving court programs will be dependent upon approval of funding by an executive branch staff member in the newly created Community Corrections Division of the Crime Commission. It is difficult to believe that the original call by the Legislature for cooperation and consultation between the Community Corrections Council and Probation and the courts, when it enacted the Community Corrections Act, was intended to be a delegation of its duty and absolute authority over the appropriations of this state. The Supreme Court is required by law to request from the Legislature appropriations necessary to carry out constitutional and statutory duties and responsibilities. We should not, however, be required to ask for appropriations twice: once from the Legislature and again from an executive branch agency. Therefore, in closing, I request that the words "in consultation with" be stricken from the bill and that the Judiciary Committee support efforts to directly appropriate funds to the Supreme Court, funds that are used by the courts and Probation for programs such as drug courts, the voucher program which provides needed service for probationers, and reporting centers which have helped so many return to society without the need of incarceration. Thank you very much and any questions. [LB390]

SENATOR ASHFORD: Yeah, before we go on, this brings up a major issue and I'll tell you what we're going to do. We can have a few questions today to set the course, but we may have to have another discussion about this in the committee and even maybe even have another hearing on it. But we can certainly set the...this is different, those of

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you who are here, this is quite a bit different discussion than the discussion about jail standards, which is...we certainly appreciate, by the way, everybody that came for this discussion and...but this is a totally different issue. So what we'll do is have a few questions today and then if there is a lot of discussion, we'll probably have another hearing on this. So, Senator Council. [LB390]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Thank you, Ellen, because your comments go to one of the questions I asked Linda Krutz when she was testifying and that is where does the Community Corrections Council or that function, where is it housed? Because if it's in the executive branch and it continues to operate as it has with regard to the monies passing through for the voucher programs and those types of things, again, it is the judiciary having to go to the executive branch to obtain funds for...to carry out this programming. And so that's part of the questioning there as well as where does the policy get developed if we operate as it's proposed to be? And I don't even think it's clear how it's going to operate under LB390, but as you can assume it might operate under LB390, I think that again separation of powers issue is a critical issue and we need to address it. [LB390]

ELLEN BROKOFISKY: Yes. [LB390]

SENATOR ASHFORD: Yeah, and thanks, Ellen, and it may be that we have to call you back on this issue. We'll see how the...what the committee wants to do. [LB390]

ELLEN BROKOFISKY: Thank you, Senator. [LB390]

SENATOR ASHFORD: But thank you all for coming today and thank you for your testimony. Now we will move to Senator Council has two bills... [LB390]

SENATOR COUNCIL: Three bills.

SENATOR ASHFORD: ...three bills, whoops, LB201...and they're sequential, LB201...

SENATOR COUNCIL: Okay, I'm just going to take LB201, right.

SENATOR ASHFORD: Do you want to do them together?

SENATOR COUNCIL: Well, LB201 is probation, then I'll do (inaudible)...

SENATOR ASHFORD: And then LB202 and LB203 together?

SENATOR COUNCIL: ...and then I'll do LB202 and LB203.

SENATOR ASHFORD: Okay. Welcome, Senator Lathrop.

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SENATOR COUNCIL: Good afternoon, Senator Ashford, fellow members of the Judiciary Committee. I am Senator Brenda Council. [LB201]

SENATOR ASHFORD: Every...just a second, Brenda. Everyone, let's be quiet. Okay. [LB201]

SENATOR COUNCIL: Thank you. Again, Senator Ashford, fellow members of the Judiciary Committee, I am Brenda Council, last name spelled C-o-u-n-c-i-l. I represent the 11th Legislative District and I appear before you at this time for the purpose of introducing LB201. And LB201 is rather simple and direct and it provides for an increase in probation fees. And the purpose of introducing LB201 is precisely the same reason and rationale that I set forth yesterday when we were discussing the bill that was introduced to increase court fees. As you'll again recall from our LR452 discussions and deliberations, under the judiciary budget and their proposed budget reductions, their recommendations and the options included a proposal that would allow the judiciary to offset any General Fund appropriation reductions by continuing its authority to draw cash out of the Probation Cash Fund. In fact, with that option in place, it was projected that the Probation Cash Fund would be completely exhausted after one year. With that in mind, as a member of the Community Corrections Council, and you just heard Ellen Brokofsky talk about some of their programs that are administered under the Community Corrections Council, as well as a member of the Legislature's Sentencing and Recidivism Task Force which recommended the expansion of day reporting centers across the state of Nebraska, those programs would be...existing programs would be in jeopardy and any possible extension...expansion of those programs statewide would be impossible without adequate funding in the Probation Cash Fund. And with that, the \$20 increase on all level of probationers would provide, I believe, the requisite funding in the event the judiciary is forced to rely upon exhausting the cash that's currently in the Probation Cash Fund. As I suggested to the committee yesterday, this bill can serve as a placeholder bill to see what the Appropriations Committee does in terms of the judiciary's General Fund appropriation. But if there are substantial reductions in that General Fund appropriation to the point that these probation services could be jeopardized and our ability to provide access statewide, currently much of the state does not have the opportunity to take care of some...to take advantage of some of these community corrections alternatives because they do not have day reporting centers. And so to provide for full access to what we have...seem to be documented successful community-based alternatives, LB201 is offered for your consideration. I'll take any questions. [LB201]

SENATOR ASHFORD: Any questions of Senator Council? Yes, Senator Larson. [LB201]

SENATOR LARSON: Real quick, I know that a judge can waive the fee. Now when they

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waive fees, do they have to waive the entire fee or can they waive just \$25 of the \$50 or is that possible? [LB201]

SENATOR COUNCIL: Well, I guess the court can normally...well, one thing, they can't waive the initial fee;... [LB201]

SENATOR LARSON: Okay. [LB201]

SENATOR COUNCIL: ...that what they can waive is the monthly fee. [LB201]

SENATOR LARSON: The month, okay. [LB201]

SENATOR COUNCIL: And how much of that monthly fee, quite frankly, Senator Larson, I've never seen them to waive a portion of the fee,... [LB201]

SENATOR LARSON: Okay. [LB201]

SENATOR COUNCIL: ...not that it's not within their authority to do that. [LB201]

SENATOR LARSON: It's not, okay. I was just wondering because I know some people, \$50 might be too much but \$25 is okay. So it was... [LB201]

SENATOR COUNCIL: More often than not, if there's a person that has a financial condition that would prevent them from paying that monthly fee, more often than not what you see occurring is a judge waiving the entire fee. [LB201]

SENATOR LARSON: The entire fee. [LB201]

SENATOR COUNCIL: And it's good that you raised that question because one of the factors you have to take into consideration is that the higher the fee, the greater the potential of a waiver. And we have taken that into account... [LB201]

SENATOR LARSON: Okay. [LB201]

SENATOR COUNCIL: ..in suggesting this level of increase. [LB201]

SENATOR LARSON: All right. Thank you. [LB201]

SENATOR ASHFORD: Thank you, Senator Larson. I guess we'll go to the proponents. Don, are you on this bill or Bob? You didn't know that part of your--well, you did know probably--part of your job was to appear here on a daily basis. [LB201]

ROBERT BARTLE: I plan to return tomorrow (laugh). [LB201]

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SENATOR ASHFORD: Tomorrow. [LB201]

ROBERT BARTLE: (Exhibit 14) And I'm pleased, Mr. Chairman, members of the committee, to address you again today. I'm Robert Bartle and I serve as the president of the Nebraska State Bar Association, approximately 6,000 lawyers throughout the state, and report out that our legislative committee and our executive council are in support. Thank Senator Council for bringing this forward. And along the lines I mentioned yesterday, we support this because it is part and parcel of the budget of the court, part and parcel of the administration of justice is to have the efficient probation system. There were concerns obviously in members of my legislative council who were public defenders, who were defense attorneys about the fee issue that Senator Larson touched upon. This is not insignificant, but I think the discussion of the waiver is appropriate here. With that, I just wanted to reinforce that it is because of our concerns on the overall budget of the court and the impact this has, not to mention if you don't have a strong probation system what that does to your institutional costs, the Bar Association joins in support of this legislation. [LB201]

SENATOR ASHFORD: Thanks, Bob. Any questions of Bob? Thank you, sir. [LB201]

ROBERT BARTLE: See you tomorrow. [LB201]

SENATOR ASHFORD: See you tomorrow. Does Warren know he has to drive down from Omaha every day, next year? [LB201]

ROBERT BARTLE: Oh, yeah. [LB201]

SENATOR ASHFORD: Okay. Next testifier. Ellen. [LB201]

ELLEN FABIAN BROKOFSKY: (Exhibit 15 and 16) Thank you again, Mr. Chairman and members of the Judiciary Committee. My name again is Ellen Fabian Brokofsky and I am...B-r-o-k-o-f-s-k-y, and I am the State Probation Administrator and employed by the Nebraska Supreme Court. I am here in support of LB201, a bill to increase probation fees. In 2003, Nebraska's Legislature passed the Community Corrections Act. Included in this act was a provision for fees to be collected from probationers. These fees were intended to enable the probation system to provide programming and services focused on reducing the likelihood a probationer would reoffend. It was thought at the time probation fees would not only offset the costs of supervision but also encourage personal responsibility for the actions that brought the individual before the court. While some, including myself, were concerned about an individual's inability to pay probation fees, a provision for waiving the monthly fees were included in the act if a probationer could show financial hardship. As it would be impossible in the time allotted today to fully explain the value of Probation's new programs and services that were created from

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both this collection of fees and a focused expenditure of General Fund dollars, I refer you to a document that's just being delivered to you now, and this document was created at the request of the Sentencing and Recidivism Task Force of the Legislature and as required by LB864. This report, entitled "Recommendations for Reporting Center Expansion, 2010," concluded that "reporting centers and the associated programming and services they make available to offenders in the community provide numerous benefits to the state of Nebraska in terms of offender outcomes, community safety and maintaining our prison population at current levels." The report addressed the success of Probation's specialized substance abuse supervision program, a program that you heard about today from Linda Krutz, and a program that offers intense intervention and treatment for felony drug offenders on their way to or just released from prison. This program works in association with reporting centers and boasts a 78 percent employment rate at a time when jobs are even difficult to obtain for educated, prosocial Nebraskans. Probation fees support substance abuse treatment--another name for crime control. The Fee for Service Voucher Program, created by the Office of Probation Administration, serves probationers, problem-solving court participants, and parolees, and connects drug-free offenders to greatly improved risk reduction. While highlighting the promising and positive outcomes we've seen as a result of our new programming and services, this important report identified the valuable collaboration between criminal justice stakeholders and addressed potential funding options to expand the success of the reporting centers and associated programs across the state. One of these options is to increase monthly supervision fees for all offenders. Although increased fees may not allow for full implementation of reporting centers in all recommended areas, any increase in fees will support expansion of proven, less costly alternatives to prison and jail. I laud Senator Council's effort to see that these alternatives would be available where they are needed and welcome this opportunity to work with her to support the intention of LB201. I would be happy to answer any questions the committee may have. [LB201]

SENATOR ASHFORD: Any questions (inaudible)? Thanks, Ellen. Thanks for the report. Okay, next proponent. Any opponents to this bill? Neutral? Senator Council, do you wish to close and move on to the next two bills? [LB201]

SENATOR COUNCIL: (Exhibits 22, 24, and 25) Mr. Chairman, I waive closing on LB201, and with your permission would like to proceed to the introduction of both LB202 and LB203. And because I am opening on both bills at the same time, my opening comments may be a little lengthier than normal but I will try to keep them as concise as I can. LB202 and LB203 provide options to achieve the objective of removing life imprisonment without any possibility of parole as a sentence for juveniles convicted of a Class I felony. One of the bills, LB203, was introduced by me in 2009 as LB307, and I'm bringing that to the committee's attention because I would request that the committee consider all of the psychological and medical information that was introduced into the record on LB307 about the brain development of juveniles be considered as a part of

the record of the hearing here on LB203. LB307 was advanced by this committee to General File. In recognition of some of the national trends and developments that I believe could have a significant impact on the direction and tenor of the debate on LB307, I elected, to the chagrin of many of the proponents of LB307, to recommit that bill to this committee for the purpose of postponing the full body's debate on this subject, awaiting the outcome of some of those national developments. One of those developments was the Supreme Court's decision to hear a case arising out of Florida questioning whether the U.S. Constitution permits a juvenile offender to be sentenced to life in prison without any possibility of parole for a nonhomicide offense. And while LB202 and LB203 are not limited in their application to nonhomicide offenses by virtue of the fact of Nebraska's felony murder rule, it was my hope that the Supreme Court's decision would shed further light and provide more direction in addressing this subject--and, in fact, it did. The Supreme Court ruled that it is cruel and unusual punishment to sentence a juvenile to life in prison without any possibility of parole for a nonhomicide offense. In doing so, the Supreme Court reaffirmed the fact underlying its holding that a juvenile cannot be sentenced to death. That fact that was reaffirmed is based on uncontroverted psychology and brain science that there is a fundamental difference between juvenile and adult minds. As the Supreme Court noted in its Roper decision, a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. The Supreme Court also noted the susceptibility of youth to peer pressure. The next point recognized by the Supreme Court in the Florida case is that the essential principle underlying the Eighth Amendment to the Constitution is that the state must respect the human attributes even of those who have committed serious crimes. The court went on to note that life without any possibility of parole is the second most severe penalty permitted by law and, indeed, shares some characteristics with a death penalty that are not shared by other sentences. In this regard, the Supreme Court, citing from another case, stated that a life without possibility of parole sentence for a juvenile defendant means a denial of hope. It means that good behavior and character improvement are immaterial. It means that whatever the future might hold in store for the mind and spirit of that juvenile, he or she will remain in prison for the rest of his or her natural life. Thus, it remains the Supreme Court's opinion, in which I share, that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies can and will be reformed. It is this fundamental moral belief that juveniles are capable of redemption that I originally introduced LB307 and which is why I am introducing LB202 and LB203. Now I acknowledge that the Supreme Court did not find life without possibility of parole unconstitutional if the juvenile committed a homicide, but in electing not to do so the Supreme Court did address the other reasons that I recommitted LB307 to this committee. And that is the evolving standards of decency that mark the progress of a maturing society. That is the standard by which the Supreme Court determines whether a punishment is cruel and unusual, and those standards are determined from legislative enactment and state practices. Since many states impose life without possibility of

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parole for homicides committed by a juvenile, the Supreme Court found that the standards were evolving but had not yet evolved to the point where the court could find that life without possibility of parole for a crime, a homicide committed by a juvenile, was cruel and unusual punishment. But what it did set out was this legislative evolution. And that legislative evolution is the reason, again, one of the other reasons why I withdrew LB307 from further debate in 2009. Since 2009, many states, due in no small measure to budgetary issues, began reconsidering the efficacy of life without possibility of parole for juveniles regardless of the nature of the offense the juvenile committed. The budgetary impacts of life without possibility of parole for a juvenile are not insignificant. In fact, in Nebraska, incarceration costs are in the range of \$29,000 per inmate annually. As the inmate population ages, particularly for those spending most of their adult life incarcerated as juveniles, those costs can exceed \$50,000 per inmate on an annual basis. Operating from these budgetary concerns, as well as the belief that life without possibility of parole sentences for juveniles closes the door on rehabilitation and second chances are cruel and misguided, there is mounting support to abolish juvenile life without possibility of parole sentences. Indeed, abolition has occurred in several states since 2009. Particularly worthy of note is Texas. Texas repealed its juvenile life without possibility of parole law in 2009, and in recent years legislation has been introduced in nine states that would eliminate or limit the use of juvenile life without possibility of parole. And I'm looking over at my colleague, Senator Coash: Yes, Texas repealed juvenile life without possibility of parole. (Laughter) And in the states that have considered eliminating or limiting juvenile life without possibility of parole, one of those states is California, and LB202 is patterned after the legislation that has been introduced in California. That legislation was introduced by Senator Leland Yee--it is SB9--and would allow courts to review, in California's case after ten years--under LB202 it's after 25 years--the cases of juveniles who were sentenced to life without parole, possibly reducing their sentences to a term of 25 years to life. There are a number of young people in California who would be eligible for this reconsideration, and it was of particular note--this bill--because right before Governor Schwarzenegger left office he commuted the sentence of a young woman who had been sentenced to life without possibility of parole at the age of 16 for killing the man who had put her out to perform acts of prostitution, and she had been abused as a child. And what Senator Yee and the other members of the California legislature have recognized is that there are other potential Sara Kruzans in the criminal justice system given life sentences at an age when their brains were still going through the developmental stages of adolescence. And during the last decade in particular, studies have shown that teenager brains are still changing rapidly, particularly in the areas that govern control of behavior. Senator Yee's bill, as does LB202, would give worthy prisoners the same opportunity that Ms. Kruzan received from Governor Schwarzenegger. And I must note this: LB202 would not, as some critics claim, release violent young thugs onto the streets. It's not a free pass. Rather, it's an opportunity for people who got into too much trouble when they were much too young to change the trajectory of their lives and to prove to a Parole Board that they are ready to contribute to society instead of spending their lives as a

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public liability. I would also like to commit to you the fact that in introducing LB202 and LB203 I am not unmindful of the impact of the crimes committed by juveniles on the families of the victims of those crimes. And I was asked to read into the record, because she was unable to be here today, an e-mail that each of you should have received a copy of from Mona Schlautman. And she says, "I regret that I will not be able to attend the hearing tomorrow in Lincoln. I do wish for my voice to be heard though. I am the mother of Jeremy Drake. Jeremy was murdered in 1992 when he was 15. At the time of his death I was his sole custodial parent and closer to him than any other person. I was devastated. My world as I knew it ended. It was the worst thing that I could ever imagine happening. Our family was crushed. There is nothing that can be done to bring him back, and thankfully I am able to believe he is okay and I will see him again when I leave this earth. I was pleased that both Jeremy Herman and Christopher Masters were convicted of their crimes and put in prison. Jeremy Herman was 17 at the time. I have been in communication with him the last several years. He has a life without parole sentence. I want fair punishment for anyone committing a crime. I believe a part of that is knowing when enough is enough. Because Jeremy Herman has repented of his crime, turned his life around, and spent the last 18 years incarcerated, I am of the firm belief he deserves a second chance at freedom. It does no one any good to keep young people in prison for life without the opportunity for parole. This could be my child as well as any of yours who make a very poor judgment as a teenager and ends up in prison. I ask all of you to show appropriate compassion for these people and support these two bills introduced by Senator Council." And it's important to note, in the case of Jeremy Herman, that despite the action taken in total on LB202 and LB203, the Supreme Court's decision in Graham v. Florida is going to require this Legislature to take some action because currently under our statute a juvenile can be sentenced to life without possibility of parole if he or she did not actually commit the homicide--and that's by virtue of our felony murder rule. And because the Supreme Court has definitively said if the person did not commit a homicide, a sentence of life without possibility of parole is unconstitutional, we will have to at least address that issue and remove that sentence as an option when the defendant did not actually commit the homicide. And at least two of the young people who are currently incarcerated, are incarcerated by virtue of the felony murder rule where they did not actually commit a homicide, so, in any event, we're going to have to address life without possibility of parole. One final point: LB202--which is the bill that's patterned after California--after it was introduced it was brought to my attention that the Supreme Court had ruled on a statute that this Legislature passed I think back in 1986. It was a resentencing statute. And at that time the Supreme Court ruled that the resentencing statute was unconstitutional because it was a violation of the separation of church and state. I did not withdraw LB202 notwithstanding that because I think LB202 provides us with an opportunity to design LB203 in such a way that we bring into play all other factors and all other criteria that other jurisdictions have determined to be appropriate for consideration in determining whether or not a young person should be granted an opportunity for parole. And with that, I will distribute copies of the L.A. Times article on Governor Schwarzenegger's

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commutation as well as a letter received today from Douglas County Public Defender Thomas Riley in support of LB202 and LB203. I'll answer any questions that the committee may have. [LB201 LB202 LB203]

SENATOR ASHFORD: Senator Larson. [LB202 LB203]

SENATOR LARSON: Thank you, Senator Council. Just to make sure, this allows for a person to submit a petition after 15 years, refile after 20, another refile at 24, and a final time at the twenty-fifth year. Correct? [LB202 LB203]

SENATOR COUNCIL: Correct. [LB202 LB203]

SENATOR LARSON: And again, excuse me for not being completely up to date with the legal system, but four shots at a recall or in resentencing a petition, obviously rehabilitation does occur but four petitions seems like a lot to me. What was your logic in picking four? [LB202 LB203]

SENATOR COUNCIL: Well, in terms of if you look at LB203, the bill provides for a definitive term of years, which is 40 years to life, if the crime was committed before you reached age 16, and 50 years to life if you were 16 but had not yet reached age 18. And under our current good time law, it would be eligible for parole after 20, and then after 25 years. Currently, under our system, even someone who is sentenced to life, they have an opportunity for a Parole Board review after 10 years. And keeping in mind...keeping in line that people mature at different stages, to give ample opportunity to demonstrate that you have been rehabilitated, that's why the four opportunities with, if you haven't convinced the Parole Board by having served 25 years by that time of the fourth, then you're going to be looking at serving the remainder of your life in prison. And that's an option. And I'm always quick to remind, as well, Senator Larson, one of the most notorious criminals in U.S. history, Charles Manson, has been eligible for parole for 33 years and has had approximately 30 parole hearings and has been denied parole every single time. And I think what LB202 and LB203 take into consideration is the fact that some people are most assuredly capable of rehabilitation and redemption and should be granted that opportunity for a second chance, and there are others who are not. [LB202 LB203]

SENATOR LARSON: Thank you, Senator Council. [LB202 LB203]

SENATOR ASHFORD: Senator Coash. [LB202 LB203]

SENATOR COASH: Thank you, Chairman. Thank you, Senator Council. Can you help me wrap...to get some numbers on Nebraska, for example? How many people are currently serving life without parole who got that sentence as juveniles, right now? [LB202 LB203]

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SENATOR COUNCIL: Okay, because we just had some recent...is it 27?
Twenty-seven. [LB202 LB203]

SENATOR COASH: And in LB202 this is retroactive. [LB202 LB203]

SENATOR COUNCIL: Pardon? [LB202 LB203]

SENATOR COASH: Your bill, LB202, this is retroactive? [LB202 LB203]

SENATOR COUNCIL: There is a question as to whether or not. There is case law that indicates that the Legislature does not have...LB202 would grant a recall and resentencing. LB203, the way its written, it's arguable that it's not and cannot be retroactive. [LB202 LB203]

SENATOR COASH: Okay. [LB202 LB203]

SENATOR COUNCIL: But what it does do, though, is provide a greater opportunity for those individuals to petition for a commutation. [LB202 LB203]

SENATOR COASH: Okay. So 27 right now. [LB202 LB203]

SENATOR COUNCIL: Twenty-seven. [LB202 LB203]

SENATOR COASH: Thank you. [LB202 LB203]

SENATOR ASHFORD: Senator Harr. [LB202 LB203]

SENATOR HARR: Thank you, Mr. Chairman. Senator Council, I have a quick question. You stated, under Texas, or a lot of states have reviewed this because it saves money for the state, and yet there's no fiscal note attached to this? Can you please explain why? [LB202 LB203]

SENATOR COUNCIL: I wish I could. (Laugh) [LB202 LB203]

SENATOR ASHFORD: It's been a question--and it's a great question... [LB202 LB203]

SENATOR COUNCIL: That's been a question that's... [LB202 LB203]

SENATOR ASHFORD: ...and it's been asked for years. (Laugh) [LB202 LB203]

SENATOR COUNCIL: Yes. I'm glad you point that out. No, there is no indication...and clearly...I mean we have, Senator Harr, of that 27, at least 3 if not 4 have already served

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more than 25 years. A couple of them are experiencing very serious health problems that require significant medical treatment. And under our corrections policy and regulations, they have to be provided with a community level standard of medical care. So we're talking about ever-increasing costs of incarcerating individuals who by their record of incarceration I think would very easily demonstrate to a Parole Board that they would present no threat to society if they were granted an opportunity for release. [LB202 LB203]

SENATOR HARR: Thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you, Senator Council. I did have occasion to, last...a couple months ago, at a juvenile justice meeting, meet the senator from Texas who is a conservative Republican member of the Texas... [LB202 LB203]

SENATOR COUNCIL: Yes. I can't think of...big (inaudible)...big guy. And we talked quite a bit. [LB202 LB203]

SENATOR ASHFORD: He has taken this issue, juvenile justice...well, the issue generally of incarceration, and they've made dramatic changes in the Texas penal system because of this senator who's been in the Texas Senate for many, many years and who has just taken this issue on and worked on it nationally. So it's interesting--an interesting guy, because he's no wimpy... [LB202 LB203]

SENATOR COUNCIL: No. And I can't think of his name, Senator Ashford, but he is... [LB202 LB203]

SENATOR ASHFORD Yeah. We had a long... [LB202 LB203]

SENATOR COUNCIL: He is cochair of the National Conference of State Legislators. [LB202 LB203]

SENATOR ASHFORD: Correct. He's the cochair...yeah. [LB202 LB203]

SENATOR COUNCIL: He's a cochair of the criminal justice task force. [LB202 LB203]

SENATOR ASHFORD: Yeah. I mean he spent his life on this issue now, and...thank you. Okay. How many testifiers do we have on this bill today? Okay. What we're going...we're going to go about an hour...you know...well, we probably won't even need to do that. Why don't we go ahead and just proceed with the proponents. And what I'm going to ask you to do is we're going to take LB202 and LB203 together, so when you come up, if you would, if you're in favor of both bills tell us you're in favor of both bills. If you're in favor of one and not the other, that's fine too, and we'll figure it out. So let's go through the proponents now of both bills. [LB202 LB203]

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SARAH FORREST: (Exhibit 26) Good afternoon, Senator Ashford, members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy and research associate of Voices for Children in Nebraska. And on behalf of Voices for Children in Nebraska, I'd like to express strong support for both LB202 and LB203. These bills take preliminary steps to establishing fairer sentencing for youth throughout our state, and this is for a couple of reasons, which Senator Council highlighted very well in her opening. Sentencing juveniles to life without possibility of parole is inconsistent with our knowledge of adolescent brain development, which the Supreme Court has recognized in both Roper v. Simmons and Graham v. Florida earlier this year. And Voices for Children believes that youth should be sentenced in a manner consistent with their needs and their differences. Youth aren't adults and the state and our nation recognizes this. Restrictions on smoking, on drinking, on voting, we...youth are different and they...and the American Psychological Association, in their amicus brief for Graham v. Florida, pointed out three differences: their immaturity, their vulnerability, and their changeability. So youth have a hard time making decisions. They're also more susceptible to negative influences, the influence of older people around them. And I think you'll find in many of these cases in Nebraska, usually older people are involved; there are other factors that are complicated. And also youth have an incredible ability to reform and change that exceeds those of adults. I think if you would all think back to when you were 13, 15, 17, the person you are now is probably significantly different. And so with that, I'd certainly be happy to answer any questions about life without parole as it is in Nebraska at the moment, and I urge you all to advance these bills. [LB202 LB203]

SENATOR ASHFORD: Thanks. I don't know if they...do we have any questions? Yeah, I don't know if there's anybody in the room that can answer the question, if they do, if they would answer it. Or you can maybe find information on the Texas law to find out if it's retroactive. Can you do that research for us? Or maybe we can do that... [LB202 LB203]

SARAH FORREST: I'm happy to get that information for you. And I also did want to throw...I have some costs that we calculated last year about the savings to the state, potentially. And if 12 inmates were paroled after serving 30 years, the savings would be over \$9 million to the state, according to something that...figures we put together last year, which I can also circulate. [LB202 LB203]

SENATOR ASHFORD: Right. Well, anything you can...maybe your colleagues in Texas, I'm sure were on this issue there. Anything you can get for us on that Texas statute I think would be helpful to us. Thank you. Thanks for your comments. [LB202 LB203]

SARAH FORREST: I'll be happy to. [LB202 LB203]

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SENATOR ASHFORD: Father. [LB202 LB203]

VAL PETER: Hi. My name is Val Peter. [LB202 LB203]

SENATOR ASHFORD: Well, it's great to see you again. [LB202 LB203]

VAL PETER: Thank you, Senator. I should get a free parking place here. (Laughter)
[LB202 LB203]

SENATOR ASHFORD: I'm not sure ours are free. I guess ours are free, but you...I've lost my pass so I can't get in there. [LB202 LB203]

VAL PETER: Okay. I'd like to do something very simple, very straightforward, and very different. And it's a framework that I ask you to think about. When--my family were immigrants to this country. In the old country, wherever it was, the rule was an eye for an eye, a tooth for a tooth. In this new land--it was called The New World. Why was it new? Because it was based on something, not the Code of Hammurabi--an eye for an eye--but on something called The Golden Rule: do unto others as you would have them do unto you. In this new world, because it was based on that, it was called the land of opportunity. Most of you know; we don't have to say all that stuff. But this was a place where you could change. You could become something you never were in the old country. And on the basis of that, anyone could become--Thomas Jefferson mentioned it, Ben Franklin--a completely different person. That's the basis on which this whole tectonic is formed. Our country, our state of Nebraska is simply that. You could become completely different with a lot of hard work. So when a juvenile does these things, horrendous--and I've probably seen more of them...by the way, I helped with Governor Schwarzenegger on that little girl. She was sexually abused at 11; she was prostituted at 13; and she killed her pimp at 16. And she was sentenced to life. But at any rate, so what I'm trying to say here is that's why...that's the most fundamental basis of this new world alignment might consider. Is it possible for a human being to change that much? Is it possible? And should we recognize it? The second part is--the senator said this--we're in a big budget crunch, folks. Why would we want to keep somebody in prison who is growing older and older and costing more and more money, when they've completely changed? That's all I have to say. I am supposed to be brief, be clear, and be gone. I am brief; I am clear; and now I'm gone. Thank you. [LB202 LB203]

SENATOR ASHFORD: Father Peter, thank you, as always. Any questions of Father Peter? [LB202 LB203]

SENATOR COUNCIL: Thank you, Father. [LB202 LB203]

VAL PETER: Thank you. Bye. [LB202 LB203]

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SENATOR ASHFORD Next proponent of these two bills. [LB202 LB203]

MARGARET BROWN: Senator Ashford and Judiciary Committee, I'm Margaret Brown and I'm the state director of corrections for the Nebraska State League of Women Voters. And I don't really have anything to add after hearing Senator Council talk, but I just want you to know that the state league of the League of Women Voters is for this bill. Put it on the record. [LB202 LB203]

SENATOR ASHFORD: Well, thank you for all the work that the League of Women Voters does on this issue and many, many other issues. Any questions? And I mean it too. I wasn't just kidding. (Laugh) [LB202 LB203]

MARGARET BROWN: Thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you. Next proponent. [LB202 LB203]

MARK RATHJEN: Members of the Judiciary Committee, my name is Mark Rathjen, R-a-t-h-j-e-n, and I am here in support of LB202 and LB203. I'll be brief, but wish to present a personal view of one of the 27 people who are currently sentenced to life without parole for crimes committed as a juvenile. I know that some of the juvenile offenders sentenced to life can and do change. They aren't irredeemable and can grow into productive, hardworking adults and members of society. In 2004, I met one of those 27 that are currently serving that sentence. Her name is Justeen Williams. She immediately struck me as outgoing, positive, and an intelligent young woman. She was 28 then and had been in prison since 1993, after making one very tragic mistake. From our first meeting, I knew she was more than just Inmate 93559. She has such faith, is so bright, humorous, and talented. She is taking classes to further her education, is involved in many programs and activities. She works hard and with a sense of perfection, and scores good or excellent on all of her job reviews. She is also one of the kindest and most giving people I know, always first to offer help to those less fortunate than herself. She adores children and glows in their presence, and has so much to give to society, yet she is still seen as a threat, even though I know she is saddened and sorry for what she did and wishes she could change that one fateful day. I came to admire, love, and respect her so much that we were married in 2008, against all of the odds. She is also my friend and teacher, helping me along with my faith, patience, and understanding. She is a remarkable woman. We're hopeful these bills advance so that all 27 who are serving life without parole will be given hope--hope that someone, someday on the Parole Board will sit down with them and find out who they've become as adults--not just judge them on their crime, but for who and what they are now. They aren't asking for a guaranteed out; just a second chance at life and their hopes and dreams. I've seen such goodness and optimism in Justeen. The other 26 must have things to offer society as well. We're grateful to all those who believe in them. Thank you. [LB202 LB203]

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SENATOR ASHFORD: Thank you, Mark. Any questions of Mark? Thank you. [LB202 LB203]

SENATOR ASHFORD: Senator Council. [LB202 LB203]

SENATOR COUNCIL: Yeah, thank you, Mark. And I thank you for your regular and consistent communication with me on this subject, and Justeen. But just...correct me if I'm wrong. In the last couple years, hasn't Justeen experienced some rather serious medical problems during her incarceration? [LB202 LB203]

MARK RATHJEN: Yes, ma'am. [LB202 LB203]

SENATOR COUNCIL: And again, I just wanted to note that. And she's been incarcerated 18 years? [LB202 LB203]

MARK RATHJEN: Going on 18 years. Yes, ma'am. [LB202 LB203]

SENATOR COUNCIL: All right. Thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you, Mark. Next proponent. Hi. [LB202 LB203]

BRETT BYFORD: (Exhibit 27) Hello. My name is Brett Byford. I'm going to be very brief because I'm very nervous. [LB202 LB203]

SENATOR ASHFORD: Don't be nervous. [LB202 LB203]

BRETT BYFORD: I've been a religious volunteer at the Lincoln Correctional Center for the past six years. When I was a sophomore in college, I was asked to come speak there because I played football at the university, and so I was asked to speak at a lot of schools and a lot of youth groups and things like that. And I was asked to come speak at a correctional institution, which I was a little unsure as to what to expect. After going there, I was really encouraged by just the resiliency and the genuineness of a lot of the guys. And I'm here today just to basically share my story and how I've gotten to know one of the gentlemen who is affected by LB202 and LB203, given that they are retroactive. His name is Jason Golka. I met him nearly three years ago. He's been incarcerated since he was 17; he is 24 now. And all I can really say for him is that every time I meet with him--I meet with him one-on-one every week. We see each other about twice a week. But we'll sit down and I'll listen to the guy and I'll just be blown away by the fact that someone with as much potential, as much intelligence, as personable, someone who is just really as remarkable as Jason, could be destined to spend the rest of his life behind bars. And it's just really a sobering fact every time I leave. These two bills, for someone like Jason, they basically are symbolic of just a small morsel of hope,

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a small dim light at the end of a very long, dark tunnel. And so I just wanted to come on behalf of some of the other religious volunteers and express my support for it because I do believe that hope like that can do more for some of those guys than any of us can really imagine. It can motivate them. It can inspire them. It can energize them every day behind bars to make positive strides and to continue to become better people and to eventually, hopefully, have the opportunity to one day, if they prove themselves, to be able to give back to the community in a positive way. So thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you, Brett. I appreciate that. And thank you for what you do, and I know there are numbers of my friends that played football at Nebraska that are engaged in going out to the facility, as well, and talking to people. And it's a big deal, so thank you for what you do. [LB202 LB203]

BRETT BYFORD: Yeah, you're welcome. [LB202 LB203]

SENATOR ASHFORD: Next proponent. [LB202 LB203]

ANN MARIE BIRKY: My name is Ann Marie Birky. I represent the Criminal Justice Prison Reform Committee of the Unitarian Church. And irrespective of the budget consideration, we feel it is a fair, moral, and just bill, and we hope you will support it. Thank you. [LB202 LB203]

SENATOR ASHFORD: Thanks, Ann Marie. Okay. Next proponent. [LB202 LB203]

NATALIE BYFORD: (Exhibit 28) I'm going to do my best to talk slowly, so I'm just going to read it off my sheet. So if you're wondering why I'm not looking at you, it's because I'm focused on just talking slowly so you can actually understand what I'm saying. My name is Natalie Byford, and I'm a mentoring director here in Lincoln, an organization called City Impact. We work with urban youth here in our community. And I'm also married to Brett, the one who spoke a couple people ago. And I don't know if you need me to spell my name. It's B-y-f-o-r-d. And anyway, I also had contact with the same individuals that Brett has, and so I'm just going to go ahead and read my experience and my perspective on that. I had the privilege of meeting with a few state senators earlier this month when my Leadership Lincoln class came to attend the State of the State address. During that session we were encouraged by those state senators, that we really do have a voice, and they encouraged us to use it. I am here today on behalf of those that do not have a voice. I'm here for those who have been incarcerated since before they were even of legal voting age. I'm asking you to please consider passing LB202 and LB203. By doing this you will not be releasing people from prison but you will be giving them the hope that after serving 25 years for crimes they committed as minors, that they might have the opportunity to have their case heard again in a court of law. Hope is a powerful thing. Hope is what motivates people to do better, to be better. I'm the director of an urban youth mentoring program here in Lincoln and I get the

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privilege of seeing hope in action with our youth every day. Hope changes things; it changes people. I've seen it through the years as I worked at the People's City Mission. I've seen it with the guys that we've gotten to know at the Lincoln Correctional Center. My husband and I have been volunteering at the Lincoln Correctional Center for a number of years, and a couple years back I met a guy named Jason Golka, and we've had the opportunity to go and get to know him through weekly chapel services, letters, and visitation. Although Jason made some really huge mistakes when he was a minor, he so hopes that one day he might have the chance to give back to a community that he's taken from. Jason isn't the same person that committed the crimes that he's been imprisoned for. Instead of starting fights and breaking rules, he is involved now in groups within the prison that discuss ways to reduce the recidivism rate and ways to encourage positive race relations. He's changed and he continues to change. The correctional system exists to correct people. To correct something, or someone, means to modify something, such as behavior, in order to make it acceptable or bring it up to a standard. I'm not naive enough to say that every person that goes through the correctional system will be corrected, but some will, and I'm asking that you pass this bill for them. Thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you, Natalie, very much. And thanks for everything you and your husband do. Next proponent. [LB202 LB203]

JIM ERWIN: (Exhibit 29) My name is Jim Erwin. I work with Christian Heritage, the Fatherhood Initiative. We have a program in all the state prisons called Destination Dad, trying to reconnect fathers with their children, so we're inside every day seeing the faces of these people. I could have read you a 40-page report that I brought but I thought we can make it in three minutes. But, at 14, I committed a violent crime, such a crime that I could have been sentenced as an adult for many, many years. At 15, my wife--who we've been married 31 years--committed a violent crime. If she had been tried as an adult, she could have spent many, many years. We met after I went in the Army. I spent...I got in the Army with a sixth-grade education and a felony. Can't do that anymore--but it saved my life. After I got out of the Army, I met my wife. We got married. Nine years later, in 1983, we started working at Bethesda Boys Ranch as house parents with 12 juvenile offenders. We've worked with juvenile offenders as house parents for...every since then, since 1983. We came to Nebraska in 2004 and worked in a home with delinquent boys, with Christian Heritage. We worked for 12 years in Central America with 20-25 delinquents from the country of Belize, Central America. Before we came to Nebraska, my wife counted that we had worked with over 300 juvenile offenders. In nine years, my life changed so much that instead of taking, we could begin to give back. I say today: What can happen in nine years for these young men and women? Can that change take place for them? This morning I was in a class at the Lincoln Correctional Center with a young man whose father and grandfather are in the Nebraska State Pen. He is third generation. And I told him what someone told me when I was 14, in jail: That moment you committed your crime is not your identity; that's not

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who you are; you have to form a new identity. We want to give those men hope. We want these young people to have hope too. So I believe we should pass these two bills. [LB202 LB203]

SENATOR ASHFORD: Jim, thank you. [LB202 LB203]

MICHAEL GARZA: Afternoon, ladies and gentlemen. My name is Michael Gabriel Garza, Senior, and I'm here on behalf of my son Christopher Garza who is doing life without parole. I really hesitated about coming up here because I didn't think anybody was really going to listen to what I had to say or anything. But after receiving the letter and reading it, I thought, you know, they're not going to know if you don't talk. Chris...my son Christopher didn't have a chance at birth. Myself, as his father, went to prison when I was 13 years old, and I got more time in prison than I do out here in society. I've been out of the federal prison now for 20 years, and thanks to my federal parole officers, Ruth Bailey and Victor Walker (phonetic), had it not been for them I would be back incarcerated again. I've held a steady job for 20 years now with no trouble whatsoever. I was not a father. All I did was make babies, get out, go make babies, go back to prison. I was never there for my kids. Chris never had a chance. I got five boys; three of them have been incarcerated. We're all out now except for Chris, and all of us live a very good life. We've changed our lives. My son...all my other sons work steady jobs. My grandkids, we know now that we have to teach them and we have to break that cycle. All my older brothers--I've got nine brothers--every one of my brothers older than me, with the exception of one, was incarcerated. I never knew what love was, what a hug was, or nobody ever told me they loved me. All I ever knew in my life was violence, and that's what Chris knew. I was a drug dealer. I went to federal prison, like I said, and I wasn't there for them. They...you know, they had some guidance, but everybody knows you've got to have a father; you know, you have to have that strength. And I wasn't there and I'm very ashamed of it. Chris has been in prison for over 20 years, and I'm telling you right now every day he's been there it's been positive. He belongs to every group in there; he speaks to people. And like he told me, he says, Dad, he says--and he supports these bills. And he says, "Even if they don't help me," he says, "if they'll help some of these other young kids in here, then that's what's...you know, I just want somebody to get some help out of all this." And with that, you know, I'll let it end. [LB202 LB203]

SENATOR ASHFORD: I think Senator Council has a question. [LB202 LB203]

SENATOR COUNCIL: I don't have a question, Mr. Garza. I just have a comment. Yeah, I want to applaud you for coming forward. This is the first opportunity I've had to meet you, but I've met your son on several occasions. [LB202 LB203]

MICHAEL GARZA: Yes, he's talked very highly of you. [LB202 LB203]

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SENATOR COUNCIL: And I met your son shortly after I introduced LB307 the first time in '09. And if I had any doubt in my mind as to the reason we need to pass either LB202 or LB203, that doubt was erased after I met your son. You should know you are to be proud of the man that he's become. And one of the things that we've done since 2009, and I didn't refer to it in my opening, is we received permission from the Department of Corrections and received the consent of several of the young people--several of the people who are serving life without possibility of parole--to interview them on camera. And I was present during Chris' interview. And he admitted to me it was the first time since he had been incarcerated that he had actually discussed with someone else the crime he committed, and I sat there and I watched this young man just completely break down upon doing that. And our hope was to have those interviews in some kind of format to show to people. But I just want you to know that your son is an outstanding young man and I applaud him because, like you said, Chris would be the first to tell you--and he tells me all the time--Senator Council, you know, it might not apply to me, but we need to provide people with hope; and if it could prevent someone from being where I am today, he'll do everything he can to support it. So the next time you talk to him, tell him we're doing it. [LB202 LB203]

MICHAEL GARZA: I will. And I also want to say one last thing, which is the most important. There's not a day goes by--not one day I guarantee--that my son isn't remorseful for what happened. And not only my son, but I myself live with that every day, because it was my fault; my fault, not my son's fault. And when I got out of federal prison they should have taken me from the federal prison right to the state prison and put me in prison for that crime--not my son. Thank you. [LB202 LB203]

SENATOR ASHFORD: Thank you, Mr. Garza. [LB202 LB203]

SENATOR MCGILL: I just have a comment. And I just want to thank you for coming, as well, and it's people like you who have the courage to evolve and learn and to see past mistakes but still try to make the world a better place. That gives me hope in all of humankind, to be honest, and that we can continue to progress as a people. So thank you so much for coming and sharing your experience with us. [LB202 LB203]

MICHAEL GARZA: Thank you, ladies and gentlemen. [LB202 LB203]

SENATOR ASHFORD: Thanks, Mr. Garza. Okay, next testifier. [LB202 LB203]

JEAN DURGIN-CLINCHARD: I really don't...my name is Jean Durgin-Clinchard and I'm representing myself, but also the Unitarian Church, the Social Justice Committee of the Unitarian Church. And we are in support of this, of both bills, and certainly hope that they not only get out of committee but that you will all vote for them once they get out of committee. So I just wanted to be sure you got my message here. [LB202 LB203]

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SENATOR ASHFORD: Well, thanks for giving it to us. We appreciate it. Thanks for sticking around and telling us what you think. Okay. Welcome back. [LB202 LB203]

MEL BECKMAN: (Exhibits 31 and 32) Thank you. Good afternoon. My name is Mel Beckman. I live at 3636 Lafayette Avenue in Omaha. I don't have a whole lot to say today after hearing the testimony that's just gone before. I think what...I'm representing two groups today: the Family and Friends of Inmates, Nebraska; and Peace with Justice from Interchurch Ministries of Nebraska. And I think what these groups want and what everybody has talked so far, they're looking for a rational and humane criminal justice system, a restorative system. We hope for a system that doesn't give up on young people when they commit a terrible crime. We want a system that doesn't pass judgment on them, a final judgment, when they're still teenagers. We hope that you'll advance to the floor a kind of legislation which holds young people accountable for any terrible crime they commit but it does not shut the door to their possible restoration to the community some day. Thank you. [LB202 LB203]

SENATOR ASHFORD: Thanks, Mel. And thanks for your commitment to social justice. [LB202 LB203]

MEL BECKMAN: Thank you. [LB202 LB203]

SENATOR ASHFORD: Next. [LB202 LB203]

GRACE MANTICH: Good afternoon, Senators. My name is Grace Mantich, M-a-n-t-i-c-h. Both of these bills would greatly affect my son. He was convicted and serving life without parole as an aider and abetter. He did not commit the crime. And I'd encourage you for your full support. [LB202 LB203]

SENATOR ASHFORD: Thanks for coming back, Grace. It's good to see you again. Okay. [LB202 LB203]

AMY MILLER: (Exhibit 33) Good afternoon, Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for ACLU Nebraska. We support, strongly support, LB202 and LB203 for all of the reasons that have been enunciated before this in regards to the Eighth Amendment in the Constitution. But I wanted to direct my very brief comments as well as our concern that the bill is necessary, both bills are necessary, out of concerns for the Fourteenth Amendment. The Fourteenth Amendment guarantees equal protection before the law regardless of race or national origin, and there is a sharp disparity in how we are sentencing juveniles to life without parole. I'd ask you to turn to the last page of my testimony, a chart that we introduced in regards to LB307, as well, which we also supported. The three columns indicate the racial makeup of the state of Nebraska. In the first column, which you can see, we are primarily a white state. If you look at our prison population, we are disproportionately incarcerating people of color.

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But the most shocking is that when you get to who is receiving life without parole for juveniles, it is so far off the charts in terms of representation of the general population in Nebraska that it is a shame. We hope that both LB202 and LB203 advance not only for the good reasons that children deserve a second look under the Eighth Amendment, but in order to try to address these racial disparities. [LB202 LB203]

SENATOR ASHFORD: Thanks, Amy. Any questions of Amy? Thanks. Any other proponents? Any opponents? Opponents. [LB202 LB203]

DON KLEINE: Good afternoon. My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney. I'm here in that capacity and as the representative of the Nebraska County Attorneys Association. And also this is an issue that's...I'm on the National District Attorneys Association board of directors, and this is a national issue that has been taken up by the national board. And we are in opposition to LB202 and to LB203. And really it saddens me to have to be here to talk about these kinds of issues. It's very disturbing as a prosecutor to sit in the courtroom on a first-degree murder case and have a 15- and a 17-year-old be the defendants in the case like I have done this fall on two double murder cases. The one murder started at 15th and Dorcas, and then they went to Dundee and then 52nd and Leavenworth, and within 30 minutes two people's lives were taken. We've had four of those kinds of instances in the last, about, year. We have one pending case right now of a 16-year-old in a deliberate, cold-blooded act, stabbing to death a Pizza Hut delivery individual after the money was already taken from him. And then we had a situation at a Walgreens store where the life was taken of a person that was trying to do the robbery by an individual who was at the cash register. These are all very disturbing and I believe, as I think everyone here does, and testified previously that our hopes are that we can do something about a juvenile who has done something wrong and make the right turn in their life. And that's why, in our office of 50 lawyers, we have 13 lawyers in the juvenile court system. I really believe that we can make a difference in the juvenile court system with regards to those kinds of issues, truancy issues. But what we're talking about here aren't manslaughter cases, they aren't second-degree murder cases for the most part. These are the top end: first-degree murder cases. And I think that to send any kind of message that because you're 16-18 years old when you take somebody's life in a first-degree murder, that your sentence should be less than anyone else's, is the wrong message. LB202 specifically...I think, as you brought up, Senator Council, I think that the Philips (phonetic) case and the Jones (phonetic) case here in Nebraska, you'd have to amend the constitution to be able to do that. They both held that Article IV, Section 13 of our constitution clearly entrusts the power of commutation to the Board of Pardons, and then a statute empowering the judiciary to reduce sentences already imposed violates the separation of powers clause found in Article II, Section 1. So I think that's a problem with LB202 in and of itself. Our Supreme Court has already ruled in that regard. The other thing I would bring up...there's a lot of things we could talk about here. We do have the ability, through the Board of Pardons, to commute a sentence, a life sentence, to a term of years. That

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capability always exists and it continues to exist. With regards to, again, the changes in LB203 where we say that we can't sentence a juvenile to life and we have to give a specific term of years, I really do wonder...the people who are involved in these kinds of crimes--and by that I mean many times the gang individuals--know what the law is. And I'd hate to see people say, well, I'm 19 or I'm 20 years old; you're a 16-year-old; you take the gun and you fire the weapon because you can't get life in prison. And believe me, they're smart enough to know that. I've taken more than my time. I'd be happy to continue on but I'll be happy to answer any questions also. [LB202 LB203]

SENATOR ASHFORD: You know, Don, I really appreciate the incredible commitment you've made to juvenile justice and continue to make every day. And it's really amazing, the work that you have done and are continuing to do, and it's much appreciated. So do we have any questions of Don? Senator Council. [LB202 LB203]

SENATOR COUNCIL: Yes. Thank you, Mr. Kleine, and I had every expectation of your appearing today. We've had our share of conversations around this issue and I respect your position on it. But one of the questions I have for you, you talked about the juvenile, the separate juvenile court system. To your knowledge, is the fact that you have the opportunity to prosecute a juvenile...well, let me put it this way. That the possibility that a juvenile can receive a sentence of life without possibility of parole, that that was something that the Legislature specifically addressed and that there's a statute that says juveniles shall be sentenced to life without possibility of parole for committing a Class I felony? [LB202 LB203]

DON KLEINE: I guess I don't quite understand the question. You know, the juvenile...there's a lot of issues with regard to juvenile court and there's a lot of juvenile justice reform. And in talking to, you know, some of the juvenile judges, one of the issues is the ability to continue supervision of a juvenile when they reach majority, which they can't do. So, in effect, that prohibits us a lot of times from sending somebody up to juvenile court, on anything serious, that 17, 17 1/2, 18 years old, because the court is only going to have jurisdiction on them for a year and a half. And it's frustrating to the judges also. But I guess I'm not quite understanding your question. [LB202 LB203]

SENATOR COUNCIL: And I guess what I'm saying is that the reason that someone under the age of 18 is eligible for a sentence of life without possibility of parole is because you have the option of prosecuting... [LB202 LB203]

DON KLEINE: Of filing. I see what... [LB202 LB203]

SENATOR COUNCIL: ...of prosecuting them as an adult... [LB202 LB203]

DON KLEINE: Right. [LB202 LB203]

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SENATOR COUNCIL: ...as opposed to as a juvenile. And the point that I was making was that the fact that juveniles are eligible to receive life without possibility of parole is not because the Legislature enacted a statute that specifically said juveniles shall be sentenced to life without possibility of parole for committing a felony I, it's just by virtue of their eligibility for that sentence if they are charged as an adult. [LB202 LB203]

DON KLEINE: That's right. And then also there's an option with the court. The court can also transfer the case to the juvenile court if the court feels it would be appropriate in reviewing the decision made by the county attorney to file on that juvenile as an adult. [LB202 LB203]

SENATOR COUNCIL: Okay. And now when the U.S. Supreme Court is looking at sentences and whether or not they are cruel or unusual punishment involved in a particular sentence, would you agree that what the Supreme Court's analysis is the first look at the defendant and then look at the crime? Because on one side they're looking at proportionality and then on the other side they're looking at the age, the mental condition... [LB202 LB203]

DON KLEINE: Absolutely. They look at both. [LB202 LB203]

SENATOR COUNCIL: Okay. [LB202 LB203]

DON KLEINE: What the...the act that the person committed and the mens rea, which usually goes to their background, their history, you know, intent is obviously a major part of the seriousness of the crime, whether it's...you know, that's how it goes up to first-degree murder, the premeditation aspect, the deliberation aspect of it. [LB202 LB203]

SENATOR COUNCIL: Okay. And in that regard, in terms of exercising your prosecutorial discretion, how much of a factor is the publicity that a crime receives in your determination of whether or not to pursue prosecution of a juvenile as an adult or, for that matter, prosecution of the juvenile as an adult with a first-degree murder charge? [LB202 LB203]

DON KLEINE: I don't think it has any bearing on my decision, whether it's a...all of these crimes are very public and there's a lot of scrutiny and a lot of attention to them, but that's not a factor in my decision-making process. It's the facts that happened with regard to the case. It's the person who was involved, the acts that they did, their history, their background, the crime that was committed. So on the Pizza Hut case I think there were six people actually involved in that case. We could have charged everybody with felony murder in that case. We didn't. We just charged the person who was the stabber and the person who assisted him in that, and on the periphery charged those people with lesser crimes, which we had the discretion to do based on, we thought, I thought

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the facts and circumstances of the case and the background and the culpability levels of the individuals involved. And I think that's something that we have to rely on is the trust that we have in the person who is elected to that position to do the right thing as far as the prosecution of these cases to make a fair judgment regarding the facts and circumstances, and apply the law and hold the person accountable and responsible as they sit fit. [LB202 LB203]

SENATOR COUNCIL: Okay. And you can't throw that personal stuff in there. But, no, that gets...no, you...I'm not...you know I'm...but the point is that when you're looking at some of the prosecutions and you're looking at it comparatively, I mean, in a lot of instances we have juveniles serving far more time for committing offenses comparable to adults who serve far less time. And I know what happens with juries and judges and such, but I guess what I'm asking you, putting the personalities aside, because I don't question your integrity, but do the juveniles that are charged as adults for felony I, are they subjected to any kind of psychological evaluation before the determination is made to charge them as an adult and felony I? [LB202 LB203]

DON KLEINE: Not before they are charged. We don't have the opportunity to do that. But usually in the course of that motion to transfer to juvenile court that occurs, the defense counsel is going to have them examined. And in the last cases we tried, there were hearings on the motion to transfer and psychological testimony was presented to the court with regard to motion to transfers. [LB202 LB203]

SENATOR COUNCIL: Okay. [LB202 LB203]

DON KLEINE: But we don't usually get that opportunity before we file. You're right. [LB202 LB203]

SENATOR COUNCIL: Thank you. [LB202 LB203]

SENATOR ASHFORD: Senator Lautenbaugh. [LB202 LB203]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, sir. Are you aware of any U.S. Supreme Court cases recently that would compel us to adopt either of these statutes? [LB202 LB203]

DON KLEINE: No. I mean there is Graham v. Florida, which I think Senator Council talked about. And, in fact, in that case they noted that 44 states, the District of Columbia, and the federal government permits a sentence of life in prison without the possibility of parole for juvenile offenders. They note that in there, their decision. [LB202 LB203]

SENATOR LAUTENBAUGH: And there's no comment beyond that saying we must do

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this or should do this? [LB202 LB203]

DON KLEINE: No, no. [LB202 LB203]

SENATOR LAUTENBAUGH: The concern you raised about if we do have the possibility...if we do enact these bills that, say, gangs, for instance, might use their younger members as shooters. That's not just theory on your part, is it? [LB202 LB203]

DON KLEINE: No. It's not a theory on my part. I mean I would...they would be aware of what the law is and I can see it happening. I mean... [LB202 LB203]

SENATOR LAUTENBAUGH: And that does, in fact, happen elsewhere, does it not? [LB202 LB203]

DON KLEINE: And it's very unfortunate. You know, we need to do everything we can to keep people out of gangs. This 15- and 17-year-old, the case that we actually just prosecuted, they were gang members. You know, it was I think a "prove up" kind of thing: Let's go out and do some work. And they took two lives and almost a third life within, like I said, a half an hour that night. [LB202 LB203]

SENATOR LAUTENBAUGH: Thank you. [LB202 LB203]

DON KLEINE: Sure. [LB202 LB203]

SENATOR COUNCIL: Senator Harr was first. [LB202 LB203]

SENATOR ASHFORD: Oh, Senator Harr, excuse me. You're after Senator Harr? Senator Harr. [LB202 LB203]

SENATOR HARR: Thank you, Mr. Chairman. Thank you, Mr. Kleine, for coming down and not just sending a letter. I appreciate that. [LB202 LB203]

DON KLEINE: Sure. [LB202 LB203]

SENATOR HARR: I just have a couple of questions, very simple. [LB202 LB203]

SENATOR ASHFORD: Is that in reference to Tom Riley's letter or...? [LB202 LB203]

SENATOR HARR: Wow. Wow. [LB202 LB203]

SENATOR ASHFORD: (Laugh) Go ahead. [LB202 LB203]

SENATOR COUNCIL: Who's in trial. [LB202 LB203]

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SENATOR HARR: Going back...well, two parts. First of all, going back to that shooter reference. Do you agree with me that a 15-, 14-year-old is very susceptible to what a 19-year-old tells them to do, right? [LB202 LB203]

DON KLEINE: Sure. Or maybe even fearful of the 19-year-old. [LB202 LB203]

SENATOR HARR: And I think that's part of what Senator Council is getting to, is that you get...your brain isn't fully developed and there's a large problem. So how would you...what you recommend to go...about that problem then? [LB202 LB203]

DON KLEINE: Well, I know a lot of 25-year-olds and 30-year-olds and 35-year-olds who don't have very mature brains either who commit crimes... [LB202 LB203]

SENATOR HARR: I'm 38. [LB202 LB203]

DON KLEINE: ...and do a lot of bad things. So I mean there's...there's a lot of...and I understand what you're saying there and there's also that question about aiding and abetting, you know. The jury doesn't find whether somebody is an aider or an abetter or not; they just find them guilty of first-degree murder because our law says an aider and abetter is somebody who...if you help somebody you're as guilty as the principal. So if you hold the person while somebody else shoots them, then you're guilty of first-degree murder even though you didn't have the gun. But you're right, sure, juveniles are susceptible to suggestions. [LB202 LB203]

SENATOR HARR: And that gets me to my second question. There is an adult court and there is a juvenile court and they exist for a reason. [LB202 LB203]

DON KLEINE: Right. [LB202 LB203]

SENATOR HARR: And can you get to why there is a separate juvenile court and a separate adult court? [LB202 LB203]

DON KLEINE: Well, it's a whole different concept. You know, the concept in juvenile court is the best interests of the child. What can we do to...and the juvenile court takes care of neglect proceedings, termination of parental rights, status offenses, delinquencies. The delinquencies are only a portion of what takes place in juvenile court. But in the findings in the juvenile court are what's in the best interests of this child; how can we make it so that this child takes the right path and changes maybe the behavior that they've been involved in. [LB202 LB203]

SENATOR HARR: And what is the public policy reason for having that separation then? Looking at best interests as opposed to, you know... [LB202 LB203]

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DON KLEINE: Well, I think because of the age--because of the age and the maturity of the individuals involved. We have cases that...we've sent serious cases of young people to juvenile court, like maybe a 12- or 13-year-old on a sexual assault charge, a very serious charge. But the nature of that individual was...it was very obvious in the nature, maybe their actions, whether it was that or something else as a juvenile act versus a cold-blooded taking a gun, putting it in somebody's face and taking their money, and then after giving them the money shooting then in the head, is a little different than something you'd call just a juvenile game or immaturity as such. So, I mean, you look at each case and each case's facts. You have to look at each case individually, I think, and make a determination based on the facts and the circumstances of that case and what impact maybe somebody else's influence had on that juvenile. Was this a juvenile act, as such, or was this juvenile acting in a mature, sophisticated, adult manner, and did the crime itself deserve more than just somebody going to juvenile court for a year and a half and having the court have jurisdiction over them? So it's difficult decisions, many times, for prosecutors. [LB202 LB203]

SENATOR HARR: Thank you, Mr. Kleine. [LB202 LB203]

SENATOR ASHFORD: Senator McGill and then Senator Council. [LB202 LB203]

SENATOR MCGILL: I have a couple things. First, I guess...you guys were just having a little chat but I think the scientific evidence is clear that the human brain is different when you're 15 than when you're 35. And so, yeah, we all know immature people like the one sitting next to me. (Laugh) But there's a drastic difference (laughter) with... [LB202 LB203]

SENATOR ASHFORD: Senator Lathrop hasn't... [LB202 LB203]

SENATOR MCGILL: ...who may be much older. [LB202 LB203]

SENATOR COUNCIL: To the right of her. To the right of her. [LB202 LB203]

SENATOR ASHFORD: Senator Lathrop hasn't opened his mouth today. [LB202 LB203]

SENATOR MCGILL: I know. I thought I'd bring a moment of levity, for a second anyway. [LB202 LB203]

SENATOR ASHFORD: Senator Lathrop, would you wish to comment? [LB202 LB203]

SENATOR LATHROP: I will in a minute. [LB202 LB203]

SENATOR MCGILL: I don't think that anyone here would argue that a... [LB202 LB203]

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SENATOR ASHFORD: You have to collect yourself, first, probably. [LB202 LB203]

SENATOR LATHROP: Yes. [LB202 LB203]

SENATOR MCGILL: But no one here would argue that a 15-year-old Steve Lathrop is different than a 50 blankety-blank year-old Steve Lathrop. Our minds do operate different. And I'm not going to ask a question about that but I just think there's a strong difference between an actual juvenile brain and how it functions and what it can process, and an adult brain. You know, we've been discussing, you know, that close age range between somebody 18 and maybe a gang leader who's 20. But, first of all, I think if you were a good gang leader you'd try to get someone other than yourself to do the shooting anyway, regardless of...and somebody younger than you is just, in my mind, the place that you would go. [LB202 LB203]

DON KLEINE: Sure. [LB202 LB203]

SENATOR MCGILL: And regardless of if...you know, the gang lord isn't really thinking about the best interests of the kid, for sure. But even...I guess it's to my general philosophy based on things I've read, as well, that if you're committing crimes like this, you're not really thinking about the consequences. If that 16-year-old was really thinking about it, they wouldn't want to spend 30 years in prison either. You know, that would be a really bad option, just as bad to a kid that age as having to spend their whole life there. I just don't think they're thinking about that, especially given... [LB202 LB203]

DON KLEINE: I don't think most people think about it. [LB202 LB203]

SENATOR MCGILL: Oh, yeah. Exactly. Otherwise they wouldn't commit those crimes because nobody really wants to go to jail unless you've been there before and you like it there, which is a reality too. So I'm still struggling with why we take somebody who is 15, who's 50 and now a great member of their society in the correctional system, and continue to spend state dollars as they get older and sicker when they've apparently...some of them, I'm sure, don't reform but some do. And so to continue to spend that money... [LB202 LB203]

DON KLEINE: I would agree. And the executive branch has the ability to commute that sentence to a term of years. [LB202 LB203]

SENATOR MCGILL: And they, like, never do that, but (laugh). [LB202 LB203]

DON KLEINE: Well, but there is that, that exists. [LB202 LB203]

SENATOR MCGILL: Yeah. [LB202 LB203]

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SENATOR COUNCIL: We've done it once in 20 years. Can I have my question now? Thank you. Since Senator Lautenbaugh wasn't here during my opening, I'm going to ask this question in follow-up to his question. Was it your answer to his question that Graham v. Florida doesn't require us to do anything with regard to life without possibility of parole? [LB202 LB203]

DON KLEINE: Not with regard to homicides. [LB202 LB203]

SENATOR COUNCIL: Exactly. [LB202 LB203]

DON KLEINE: Right. [LB202 LB203]

SENATOR COUNCIL: Okay. But with regard to any other area, and we, right now, currently you can get life without possibility of parole if you're charged with kidnapping. [LB202 LB203]

DON KLEINE: Right. [LB202 LB203]

SENATOR COUNCIL: So the Graham v. Florida requires us to do something, doesn't it? [LB202 LB203]

DON KLEINE: Yeah, if it's the kidnapping aspect. That's the only one I know that would have an impact on it. [LB202 LB203]

SENATOR COUNCIL: And arguably, felony murder? [LB202 LB203]

DON KLEINE: No. [LB202 LB203]

SENATOR COUNCIL: If the youngster didn't commit the homicide? [LB202 LB203]

DON KLEINE: Well, I mean that's a...you'd have to change the laws and say that the...you know, the jury finds somebody responsible for first-degree murder even if they're an aider and abetter under the felony murder rule. [LB202 LB203]

SENATOR COUNCIL: Yeah, but the Supreme Court didn't talk about what you were charged with. It speaks to the act you committed. And the Supreme Court decision says it is cruel and unusual punishment to sentence a juvenile for an offense that is not a homicide. [LB202 LB203]

DON KLEINE: Well, felony murder is a homicide though. [LB202 LB203]

SENATOR COUNCIL: No, no, no, no. When they did not commit a homicide. [LB202

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LB203]

DON KLEINE: Well, if the offense that they committed was a homicide because felony murder is a homicide. [LB202 LB203]

SENATOR COUNCIL: Well... [LB202 LB203]

DON KLEINE: I guess that's a... [LB202 LB203]

SENATOR COUNCIL: Well, the act...the act. And I would submit to you that it would be subject to a successful legal challenge under the reading of the decision of the Graham court, which was it's the act they commit. Okay, not what we call the act they commit; it's the act they commit. [LB202 LB203]

DON KLEINE: So that's... [LB202 LB203]

SENATOR COUNCIL: We call the act they commit murder under the felony murder rule, but they did...they were not the murderer. [LB202 LB203]

DON KLEINE: Well, I guess under that theory, though, you're saying that the person who grabs the person from the car and pulls them out and takes his billfold while the other guy takes the gun and shoots him, isn't guilty of murder then; he's not responsible for the homicide--which I disagree with. [LB202 LB203]

SENATOR COUNCIL: You know...and reasonable minds will differ. But the reading of the decision speaks specifically to committing the act of murder and makes some side reference to the question of how does this all relate in the situation of the felony murder rule. But we need to take steps, because we sentence juveniles to life without possibility of parole for kidnapping and that's not a homicide. So the answer to the question that we don't have to do anything as a result of the Graham decision is not accurate. We're going to have to do something to be sure that our laws come into compliance with what the Supreme Court said. And this one comment: I just think it's interesting that the conclusion is, if you act mature, ergo you are mature and we're going to treat you as if you're mature; where, you know, dumb kids try to act like adults and try to do adult-like things, that doesn't make them mature. And the fact that when we charge a juvenile as an adult, that the whole premise of the juvenile court system, which is what's in the best interest of the child, goes out the window, because you've determined that this child is no longer a child because of the mature act that they committed. Is that essentially...the best interests of the child no longer... [LB202 LB203]

DON KLEINE: Well, I don't that's an exact analysis. But I make a determination of that and then the district court judge also makes a determination of that. [LB202 LB203]

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SENATOR COUNCIL: Okay. That's all I have. [LB202 LB203]

SENATOR ASHFORD: You know, this...just very briefly. I think I've had this...been on the committee many, many years, going back many years before this, and this issue has come before us. I think these are close calls. And when I...I remember...in reading these cases, what I get out of them is that the Supreme Court is trying to figure out what the sense of the community is. That's one of the standards they look at. And they look at what other states have done and how other states have approached this. So I think as the legislative branch, if we change the law tomorrow on any of these issues, you're going to be as vigorous a prosecutor and as fair a prosecutor as you always have been, and that's not going to change. And we're fortunate to have you there. And so I think it's our job, really, to decide what is the sense of the community on issues like this. Your job is to prosecute and you do a good job and that's the way it works. So we have to decide as a legislature--that's our job--what is the sense of the community on these very different kinds of decisions. And that's how I've always read it. And I think to some degree the Supreme Court is saying that. Where is the...where are the people...on the death penalty I read with great interest Justice Stevens' article which has now become so famous, and he struggled, as have I, with the death penalty and with the issue that's being brought up today. It's a struggle. It has to be. [LB202 LB203]

DON KLEINE: Right. If you think... [LB202 LB203]

SENATOR ASHFORD: As do you, because we talk about it. [LB202 LB203]

DON KLEINE: Right. Right. [LB202 LB203]

SENATOR ASHFORD: So I think all of us...all of us are struggling with it. Our roles are different. We give you a law change, you'll prosecute it and you'll do a great job of doing that I'm convinced. It's our...our job is a little different: What is the sense of the community. And so it's always that back and forth.. [LB202 LB203]

DON KLEINE: It's certainly...one closing comment. In working as a prosecutor right out of law school clear back in the late 1970s, the biggest difference I see from then to now is, like I said, sitting in a courtroom, and unfortunately with a 15- or 17-year-old charged with a very, very serious crime, that their...you know, that's very disturbing to any prosecutor and to all parties involved: judges, the defense counsel, and jurors. So it's something that again that the Legislature has to deal with. [LB202 LB203]

SENATOR ASHFORD: Right. And as science changes on that issue, as other things change in society, over time as we learn more about juveniles, then we can take that into consideration. We can pass a law. And what is assuredly the case, is Joe Kelly and Don Kleine are going to prosecute those cases in the way that they should. So anyway, thank you for your comments. [LB202 LB203]

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DON KLEINE: Thank you. [LB202 LB203]

SENATOR ASHFORD: Any other opponents? Neutral testifiers? Senator Council. [LB202 LB203]

SENATOR COUNCIL: Thank you again, Senator Ashford. And I want to thank the committee for its time and attention. This is a very serious issue. And as I indicated in my opening comments, while LB202 and LB203 are applicable to any felony I offense committed by a juvenile, it is my opinion that the Supreme Court in Graham v. Florida does, in fact, require us to make some legislative... [LB202 LB203]

SENATOR ASHFORD: And I just...can I interrupt you for just a minute, because I think that really is it: How far has Graham moved us? I think you read it and you read it, you read it, and you can read it literally, you can read it with more impliedly. You can read it for other messages depending on what justice you're reading. And that's...you just...it is definitely moved us from where we were before Graham. The question is, have they moved us here? And that is really a legislative decision to some degree. [LB202 LB203]

SENATOR COUNCIL: And that's, in fact, the point that I'm making, Senator Ashford, is whether this Legislature in terms of felony I convictions that based on crimes--and act other than homicide--needs to be addressed and revisited in light of the Graham decision. I'm of the opinion that with the science and as science has evolved and as the Supreme Court recognized in Graham, has not changed since Roper. In fact, there's more medical data and psychological data on the issue of whether the brain has developed to a point that we can treat children the same as we treat adults for the actions they take. And if there's any group of individuals capable of reform and redemption, it would be those whose brains are still in the process of developing and, with the right kinds of programming, can change. I appreciate the testimony of all of the proponents. And during my opening I did concentrate and said I was only going to concentrate on a couple of the issues that moved me to introduce LB202 and LB203 as I did with LB307. And I addressed the Supreme Court decision. I addressed the evolving standards with regard to legislative action. And I am pleased that Amy addressed one of the other factors which is racial disparity and that racial disparity does exist in the state of Nebraska and, in fact, it places the state of Nebraska right in with the national data which shows that 77.3 percent of all juveniles serving life without possibility of parole are youth of color. And I think that's a serious issue that needs to be factored into our consideration of these measures. [LB202 LB203]

SENATOR ASHFORD: (Also see Exhibits 17-21 and Exhibit 23) And it's an issue the Supreme Court talks about from time to time. Thank you. I'm going to just say one thing. I heard today that a former Chair of this committee, Jerry Chizek, was quite ill, and I remember serving with Senator Chizek, and he started out as a proponent...a strong

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proponent of the death penalty and I think he finished his legislative career as an opponent. There is no more tougher law enforcement guy than Jerry Chizek, and many in this room remember him, and...but unfortunately he's not very well, so I just wanted my colleagues to know that and I'm going to try to find out more about his condition. But he's quite a guy. Anyway, that concludes the hearing on this bill. Senator Avery. [LB202 LB203]

SENATOR AVERY: Thank you, Mr. Chair. Good afternoon, committee members. My name is Bill Avery, spelled B-i-l-l A-v-e-r-y. I represent District 28. This will be my third appearance before you this session already--I hope. [LB129]

SENATOR ASHFORD: Yeah. That's the question. (Laugh) [LB129]

SENATOR AVERY: I've lost track; I don't know. I'm here to talk to you about LB129 which amends criminal statutes with respect to filing complaints and the prosecution of felons by eliminating the statute of limitations on felonies where DNA evidence exists and a profile has been developed. You remember last year we passed a bill to expand DNA collection to all persons convicted of a felony. And I think we all agreed in that discussion that this was important to law enforcement in convicting the guilty, exonerating the innocent, and identifying missing persons. The science and the technology of DNA is rapidly evolving. And I believe that we have reached a point where DNA is the closest we have ever gotten to achieving ironclad, indisputable evidence at crime scenes. DNA constitutes what might be called a genetic fingerprint, robust enough to survive degradation in nonideal circumstances and conditions. You may remember last year, Joe Kelly, the Lancaster County Attorney, filed a warrant for arrest against a John Doe as described by his DNA profile. This was just a day before a three-year statute of limitation was set to expire. The timely filing of that case will keep the case alive until Joe Doe, who left plenty of DNA evidence at the crime scene, is found and charged for stealing ten firearms from a local gun shop. We're going to see more of this. This bill that I am proposing...(Recorder malfunction. Some testimony lost.) [LB129]

OLIVER VanDERVOORT: I think it should be good now. [LB129]

SENATOR LAUTENBAUGH: Are we good? [LB129]

SENATOR ASHFORD: Senator Avery. If you have to come... [LB129]

SENATOR AVERY: I don't need to repeat anything? [LB129]

SENATOR ASHFORD: Well, if you have to repeat it again some other day, we'll bring you back. [LB129]

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SENATOR AVERY: Okay. All right. I think we are going to see in Nebraska more of these John Doe filings. This bill would prevent that from having to take place. We do have a number of felonies where no statute of limitations exist in the state. But just let me enumerate some of the felonies that we do have on our books where time does expire: kidnapping, false imprisonment, child abuse, pandering or debauching of a minor, violation of the Nebraska Securities Act, criminal impersonation, identity fraud. These are some; there are more. These are some of the felonies where statute of limitations do exist. It's possible that in some of these crimes DNA evidence is present, and where that is present I would like to suspend the statute of limitations so that we can keep those cases open and active for prosecution in the future. This DNA does become a surefire mechanism for law enforcement, and in the end I think we will be solving more crimes with this bill. So I would ask you to advance this to General File. [LB129]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB129]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, Senator Avery. And I may be asking this question so that the next witness isn't surprised when I ask him the same question. So at least he'll have time to think about it and maybe it's obvious. It isn't to me though. This seems like...I'm reading the crimes for which we don't have a statute of limitations, and there's some listed. And I'm reading the victims somehow (inaudible) the statute doesn't start to run because of the age of the victim and whatnot. As I read this, this is the only addition to that list where we're saying, and if the evidence is good enough the statute never runs. Is this an innovation of the law? Are we plowing new ground here? Because I just don't know the answer. [LB129]

SENATOR AVERY: Actually no. I know of other states where you had statutes of limitations on worse crimes than what we do--in fact, some violent crimes, sexual assaults, and things of that sort. And they've passed similar legislation. Where DNA evidence is present, you just keep the case open and the statute of limitations is suspended so that the prosecution doesn't have to file against a John Doe profile. [LB129]

SENATOR LAUTENBAUGH: So if there's DNA present, this would effectively remove any statute of limitations. [LB129]

SENATOR AVERY: Right. [LB129]

SENATOR LAUTENBAUGH: Not just total... [LB129]

SENATOR AVERY: I think...that's my intent. [LB129]

SENATOR LAUTENBAUGH: And I don't...I'm not an expert in this area so I don't know

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if that's troubling or not. I just don't know the... [LB129]

SENATOR AVERY: I'm not even a lawyer so I can't be an expert in it either. [LB129]

SENATOR LAUTENBAUGH: All right. Thank you. [LB129]

SENATOR ASHFORD: Thank you, Senator Avery. [LB129]

SENATOR AVERY: Thank you. I will not stay to close because I have to get back to my committee. They miss me. [LB129]

SENATOR ASHFORD: Okay. Fair enough. It may look...it looks like it may be just Joe, but that's all right. (Laugh) Maybe not. Maybe there's someone else. Welcome. Congratulations. [LB129]

JOE KELLY: Thank you very much. [LB129]

SENATOR ASHFORD: I think this is your first...is this your first? It is your first appearance... [LB129]

JOE KELLY: Yes. [LB129]

SENATOR ASHFORD: ...since your ascension...or election...or whatever. (Laugh) [LB129]

JOE KELLY: Yes, first one back. Thank you. Joe Kelly, K-e-l-l-y, 575 South 10th Street, Lancaster County Attorney, here in support of LB129. Two types of cases come to mind when I look at a bill like this because this is a statute of limitations bill. It's not necessarily a DNA bill; it's a statute of limitations. And the first type of case is this: I have a DNA profile from the crime scene--and we can use rape and a rape kit as the best example of that, so. When I took that...when I obtained that sample from the victim of a rape, I'm relatively certain that that particular sample will yield the DNA of the perpetrator. And in this same case, maybe I know that that...and, therefore, I know that that crime scene item from the rape kit is directly related to the perpetrator of the crime. And so I will take that and test it and I will get a robust DNA profile, 16 or so, the locations, on the perpetrator. So I know the DNA profile of that person. I know that that DNA profile was obtained from a piece of evidence that is directly related and implicates that person in the crime. And I just don't know his name. So in that case, presently I could file a criminal complaint within the regular statute of limitations using the profile, DNA profile, of the defendant--which I've done a few times and Omaha has done it a few times. My problem right there, right now, is today the Nebraska Supreme Court hasn't told us, yes, you can do it that way. And overall, the majority of courts around the country that have looked at this have said, yeah, you can do it that way. The other thing

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I can do is try and hold off until I've identified somebody with that profile. And with the case of a rape, I can do that because there is no statutory statute of limitations on that rape. So I can wait if I want to. Now the second type of the case is more problematic, and that's probably what Senator Avery's proposal goes to more, and that would be this: I have many crime scenes from a murder--and I'll use one because I might be able to tell you about it if I talk quickly. I have many items from a crime scene, let's say a murder, double murder with an arson, out in the country. And we picked up shell casings and bottles, and beer bottles and things that may have been there for five years before the crime and things that may have been directly related to the crime. We don't have a suspect. We don't know a lot about the motive. We don't really know what we're looking for so we just took everything. Took it back to the property room. And I'm a year later and we still don't have a suspect. In that particular case, I cannot afford, and the State Patrol lab can't do DNA sampling on, let's say, 100 items or 150 items, unless we just tie the lab up for the next year. So in that particular case, what Senator Avery's proposal does is it allows us to wait until we know more about the crime. Maybe we zone in and find out that a Storz beer can is something that the person who committed this crime was drinking, and we do have one in the...and we've learned that from a codefendant who's down in Oklahoma and wants to tell us about it. So we take the one can; we test it; and, bingo, we get a hit on this person. Then I've got a case that I can proceed on. Now what I just gave you is a murder case--no statute of limitations. So I really think what you're going to be dealing with here is more in the line of assault in the first degree and some other crimes that aren't specifically now exempted from the statute of limitations. So you really...I see my time is up, so. [LB129]

SENATOR ASHFORD: Oh, go ahead and finish, Joe. [LB129]

JOE KELLY: Okay. I think you could arguably look at this and you say, well, maybe it's too broad. Quote, DNA is present, quote. Because it doesn't differentiate from cases where that DNA that's present has something to do with the crime versus has nothing to do with the crime. DNA is present all over this table, and if we were to test it right now after everybody who has been here through...I don't know what we'd end up with. And the other point was just to do that and suggest that...and this isn't a conversation I've had with Senator Avery, but maybe what he's getting at is more like something like a DNA profile on a key material incriminating piece of evidence or something for those cases where the crime is not already exempted from the statute. [LB129]

SENATOR ASHFORD: Okay. Senator Lautenbaugh. [LB129]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, sir. Well, if CSI has taught us anything, it's that every case DNA is present and is vital evidence. (Laughter) So is this just...would this just eliminate statute of limitations, effectively? [LB129]

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JOE KELLY: It's really broad with that wording. And I'll tell you as a prosecutor, I mean do I really want DNA evidence from a Class III misdemeanor popping up 15 years later? No. I mean I can't prove that case in all likelihood, so. [LB129]

SENATOR LAUTENBAUGH: And you had indicated this has been approved elsewhere. But this seems like DNA is analogous to fingerprints, and we do have cases with fingerprints in the statute of limitations to apply. And I'm troubled by the fact that this is looking to do away with the statute of limitations based upon the type of evidence, not the circumstances of the victim or the severity of the crime. So is this an innovation that we're doing here? [LB129]

JOE KELLY: Well, two things I think lot of courts have said. DNA is different when it comes to crime and a lot of things that have to do with crimes. But so that I'm clear, I didn't say that this language from this proposal I've seen other places. Perhaps it is. Haven't looked. Perhaps his staff has. What I was saying is we've filed DNA profiles before, so it's the State of Nebraska v. 15, 16, 17, 13, whatever the profile is. And some courts in other states have said, yeah, you could...that named a specific defendant; you can do it that way. [LB129]

SENATOR LAUTENBAUGH: But as you sit here, you don't know of any states that have gone this far specifically. [LB129]

JOE KELLY: No. No. Haven't looked. Nope. [LB129]

SENATOR LAUTENBAUGH: Unrelated question but germane in a broader sense: If we have...if our statutes no longer say life imprisonment without possibility of parole, do we lose anything? Or does life imprisonment cover the topic, and without possibility of parole is just surplusage? Not on this bill. [LB129]

SENATOR HARR: On murder I. [LB129]

SENATOR MCGILL: On LB12. [LB129]

SENATOR HARR: On murder I. [LB129]

SENATOR LAUTENBAUGH: On murder I. [LB129]

JOE KELLY: Okay. I agree with... [LB129]

SENATOR LAUTENBAUGH: If you're not prepared to answer it today, that's fine. [LB129]

JOE KELLY: I think it's Senator Wightman's--no? maybe?--bill. [LB129]

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SENATOR MCGILL: Yeah, it's Senator Wightman's. Yeah. [LB129]

JOE KELLY: I agree 100 percent. If you want to have that in your statute, you've got to first take it out and then you've got to put the exact wording back in, if that's what you want to do. [LB129]

SENATOR LAUTENBAUGH: But do we gain anything by putting it back in? [LB129]

JOE KELLY: No. [LB129]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB129]

SENATOR LATHROP: That makes that easy. [LB129]

SENATOR MCGILL: Yeah. [LB129]

SENATOR LATHROP: I'm glad you answered that for us. [LB129]

JOE KELLY: Well, and in my memory, because I was very much involved in that 2002 session, (1) Life without parole came in at the very last. I think it was Senator Beutler's proposal. And (2) It was being offered by...mostly by opponents to capital punishment to put some certainty in life sentences. I think it's been portrayed as coming from some different angles. But, I mean, that's my memory of why it was there. [LB129]

SENATOR LAUTENBAUGH: Thank you. [LB129]

SENATOR LATHROP: I've got a question for you. [LB129]

JOE KELLY: Sure. [LB129]

SENATOR LATHROP: If you go back to kind of the law school philosophy of the statute of limitations, part of it is there are broader policy implications when it comes to the statute of limitations. The very, very serious things we don't care if anybody ever has a moment's peace of mind for the rest of their life, and so they can be chased down and subjected to this. But this truly would open up a lot of things that somewhere along the way we decided there should be a limit on how long prosecutors have so that the person can get on with their life and the prosecutors can... [LB129]

SENATOR HARR: Get on with theirs. [LB129]

SENATOR LATHROP: ...throw this stuff away out of the property room. [LB129]

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JOE KELLY: The answer is yes. And just yesterday I got a one-page report from the Nebraska State Crime Lab, and they did, on a cold call grant, they tested a beer can from a crime scene from the 1990s, and they had a hit and it was on a hit on someone who wasn't on our radar at all--and I think will have nothing to do with it--because I went back in that file last night with the police, and we checked and it was really like the example I've used. It was an old beer can that was picked up in a public park with a thousand other things. And so that person was implicated. Now that person who we had that hit on, because he is in CODIS, is now part of our investigation. And what you're saying is, do we really want that going on for Class III misdemeanors, where somebody out of the... [LB129]

SENATOR LATHROP: And that's sort of the point. The point of the statute of limitations is, somewhere along the way we decided some things are worth not ever letting somebody off the hook on, and other things, whether you look at from a civil law or a criminal law point of view, people ought to be able to move on with their life on some of these things. [LB129]

JOE KELLY: Sure. I don't disagree. [LB129]

SENATOR LATHROP: And this really is...just because DNA provides a certain level of certainty, the flip side of that is you also have witnesses that have disappeared, explanations that you can't get to. And that's not accounted for when you just make it open ended because you happen to have some DNA evidence. [LB129]

JOE KELLY: I agree. [LB129]

SENATOR LATHROP: Okay. Yeah, Senator Lautenbaugh. [LB129]

SENATOR LAUTENBAUGH: Actually Senator Harr was next. [LB129]

SENATOR LATHROP: Oh. Senator Harr. [LB129]

SENATOR HARR: Thank you, Senator Lautenbaugh. Thank you, Mr. Chairman. I guess the example that...first of all, congratulations on your election. The example you gave was assault in the first degree. Wouldn't it be easier just to open it up to assault first degree as another one that we don't allow a statute of limitations, than to open this Pandora's box of, as you say, Class III misdemeanors? [LB129]

JOE KELLY: Yeah, depending on legislative intent, that's one way of going about that. [LB129]

SENATOR HARR: And in your opinion what crimes should we get rid of the statute of limitations on that we don't currently? [LB129]

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JOE KELLY: That was one of them. I mean assault in the first degree in many, many cases means you put somebody in a hospital with severe brain damage or something for the rest of their lives, their life. [LB129]

SENATOR HARR: Can you think of any others though? [LB129]

JOE KELLY: I did this morning but I can't right now. Robbery. Where's robbery? Robbery is exempted. No, it isn't. [LB129]

SENATOR HARR: No. [LB129]

JOE KELLY: No, robbery has always been one we've... [LB129]

SENATOR HARR: Is kidnapping? I always thought kidnapping was too. Now I don't see it. [LB129]

JOE KELLY: Forgery is. No statute for forgery and no statute for treason. [LB129]

SENATOR LATHROP: Several sexual assaults and... [LB129]

JOE KELLY: Yeah. I think the legislative...in the last few years you all have added almost every sort of serious sex crime in there. [LB129]

SENATOR HARR: Okay. And I can see why forgery is (inaudible). [LB129]

SENATOR LATHROP: (Inaudible.) Okay, Senator. [LB129]

SENATOR LAUTENBAUGH: Just briefly, if your hypothetical was based in reality and, as an old beer can collector, if you do have a Storz beer can and you've decided it's no longer of evidentiary value, I would like to talk to you. But that's... [LB129]

JOE KELLY: Okay. I'll let you know. (Laugh) I'll let you know. [LB129]

SENATOR LATHROP: All right. Perfect. And with that, thank you. [LB129]

JOE KELLY: All right. [LB129]

SENATOR LATHROP: I can't...I don't remember if you came up here as a proponent... [LB129]

SENATOR MCGILL: Any other proponents? [LB129]

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SENATOR LATHROP: ...or were you neutral? [LB129]

SENATOR MCGILL: He was here as a proponent. Is there anyone here in opposition?
[LB129]

SENATOR COUNCIL: She was Vice Vice Chair. [LB129]

SENATOR LATHROP: I know. But the Vice Chair is here. [LB129]

SENATOR MCGILL: ...because of his incompetence. [LB129]

SENATOR LATHROP: Let the records reflect that we're quarreling and I've been called
immature...usurping my role. [LB129]

SENATOR ASHFORD: Now you've had a rough day, Senator Lathrop. I understand
that. [LB129]

SENATOR LATHROP: She's usurping my role. [LB129]

SENATOR ASHFORD: Are we...do we have opponents? Do we have neutral testifiers?
We're done. [LB129]