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Judiciary Committee
February 04, 2011

[LB226 LB242 LB284 LB402 LB677]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 4, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB226, LB242, LB402, LB677, and LB284. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: We welcome everyone to the Judiciary Committee this warm Friday afternoon, which is good. We have five bills today. The first bill is LB226, Senator Gloor's bill, and you could step up. Let me just, for those of you, and I know many of you are here quite a bit, but we have a...other than the introducer, in this case Senator Gloor, we ask you to confine your comments to three minutes. We have this light system with an ejector seat that...except for Senator Gloor, that when the yellow light comes on we'd ask you to summarize your comments--and, of course, not counting any of the questions that you may get on the issues that you're presenting. But there's a sign-in sheet behind where Senator Gloor is seated and we'd ask you to fill that out before you testify, if possible, and so we have a record of you being here. With that, Senator Gloor, welcome--and LB226.

SENATOR GLOOR: Thank you, Chairman Ashford. Members of the Judiciary Committee, it is my distinguished honor to be in front of such an august group, one of the best known committees, my first chance to testify here. There are few better...
[LB226]

SENATOR ASHFORD: Well said, Senator Gloor. [LB226]

SENATOR GLOOR: ...few better other than, of course, the ones I serve on but...
[LB226]

SENATOR ASHFORD: Yeah. [LB226]

SENATOR GLOOR: I'm Mike Gloor, G-I-o-o-r. I'm here today to introduce LB226 to create within the Nebraska Criminal Code the crime of assault with bodily fluids against a public safety officer. No nice way to say it, we're talking about public safety officers being spit on, having urine, feces, other body fluids thrown at them. Most of us won't suffer that kind of abuse even once in our lifetime. Persons who engage in this disgusting action are usually inmates in the correctional system or juveniles who are committed to a youth facility or sex offender committed to a mental facility. This action would be a crime only when the officer involved is engaged in the performance of their official duties or the perpetrator's actions are intentional. Public safety officers, as defined in this legislation, means peace officers and correctional officers of the state, county, city, or village, state probation officers, and employees of Health and Human

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Services or the Office of Juvenile Services who interact with incarcerated or committed individuals. Currently, no criminal penalties exist for this behavior. LB226 will make this offense a Class I misdemeanor with penalties from 0 to 1 year imprisonment and/or \$0 to \$1,000 fine, or if the offense is committed by a person who knows they are infected with HIV or hepatitis B or C, the penalty increases to a Class IIIA felony with a penalty of up to five years' imprisonment and/or a \$10,000 fine. These three specific diseases are considered the most serious threats to the public safety officers that we are concerned about. Information from the U.S. Department of Justice, by the way, indicates that 30 percent of inmates in the nation's correctional systems are infected with at least one of the diseases listed in this legislation. In the last four years, there have been 223 such assaults in the Nebraska Department of Correctional Services alone. LB226 proposes that upon a showing of probable cause by affidavit to a judge, that a judge shall grant an order or issue a search warrant authorizing the release of medical records and collection and testing of evidence that may be necessary to determine the existence of one of the aforementioned communicable diseases at the time of the commission of the crime. I have one small wording change to offer the committee in AM230. This amendment is to more accurately state the name of the communicable disease where virus involved in the advanced penalty. It removes "acquired immunodeficiency syndrome" and leaves HIV, and removes "virus" after hepatitis B and C, and some of that's for brevity and some of that's for accuracy. By the way, as a matter of record and reference, we did vet the issue of communicable disease by the Department of Health and Human Services to verify that a threat does exist. Ask for your support and be glad to answer questions, but there are representatives from the Attorney General's Office, county attorneys, other law enforcement that are here to provide testimony and also answer questions. I have another bill that I am introducing and... [LB226]

SENATOR ASHFORD: In a lesser committee? [LB226]

SENATOR GLOOR: To a lesser committee, I'm pained to agree. But if I am down there presenting that bill and not able to close, I would waive my closing. [LB226]

SENATOR ASHFORD: Thank you, Senator Gloor. Any questions of Senator Gloor? Yes. [LB226]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Gloor. Would you be averse to adding protection for EMTs in this bill? [LB226]

SENATOR GLOOR: Great question, Senator Lautenbaugh. I've been asked that question about weekly for the past two months, and let me tell you...let me give you as straightforward an answer as I can sum it up by...and be brief about it. This is an issue to me, and I believe it was brought to me for consideration by the AG's Office because of my concern of health personnel, who in my experience, working ERs, sometimes working floors, had this problem. And so my first inclination was to be far, far broader

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with this and include not only first responders, firefighters, ER nurses, ER physicians. But there's no end to it and that's the problem I'm at, and I think right now, and in talking with the AG's Office about this also, trying to be more specific and defined with it, keep it tightly limited to a group. And the reason this group would be one that we can be a little more comfortable with as opposed to being broader is the examples that have been given to me. And an example I know from central Nebraska specifically has to do with an inmate who saved their urine to throw in the face of a corrections officer. The correction officer eventually quit, I am told, because of concerns about what this might mean if it continued. We're talking about, as opposed to what might happen with first responders, what would happen to some of my employees, and that is somebody in an inebriated compromise, it's not an excuse, but their condition is such that it's a little different than somebody saving up their urine or other things to throw at somebody. And so in this case I thought let's stick with it being a smaller group that seems to be the one that we have good documentation has been subject to this on a pretty regular basis. [LB226]

SENATOR LAUTENBAUGH: Leaving aside the offensiveness of the act and the figures you cited regarding the number of incarcerated people who might have these various diseases, are there any instances of transmission in this way that we're aware of? [LB226]

SENATOR GLOOR: Great question. I don't have an answer to that. I don't have an answer to that. And when you consider the disease of HIV, it's possible that that's happened and we don't know it yet. I think that's less true with hepatitis B and C, although still possible from what I know of both of those viruses. But as it relates to HIV, it is possible that that's happened and we just don't know it. That's one of the frightening aspects of that particular disease. [LB226]

SENATOR LAUTENBAUGH: Thank you. [LB226]

SENATOR ASHFORD: Yes, Senator Larson. [LB226]

SENATOR LARSON: Blood would fall under the bodily fluid under this act, correct? [LB226]

SENATOR GLOOR: Correct, Senator Larson. [LB226]

SENATOR LARSON: Because I know when we talk about urine and mucus and vomit, none of that can actually transmit HIV, from my understanding. [LB226]

SENATOR GLOOR: I believe that's true, although what we have to remember when it comes to a blood-borne pathogen like that is bleeding gums mean you have blood in your spit. It's possible to have blood in stool, and without trying to avoid the delicate

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issues here, the Preparation H effect of why there might be blood in stools. I mean there is...it is easy to get blood in different types of body fluid and body waste. [LB226]

SENATOR LARSON: Is there any concern under Section 2(5) that in terms of forcing...you know, the court forcing the opening of medical records and privacy issues with those medical records being opened and past medical records and... [LB226]

SENATOR GLOOR: No, and I think we're trying to speak to that in the bill, but this should take care of issues around privacy. [LB226]

SENATOR LARSON: Well, like because obviously somebody who's committing that offense, their medical life is going to be combed after this and... [LB226]

SENATOR GLOOR: Well,... [LB226]

SENATOR LARSON: ...is that under our purview? [LB226]

SENATOR GLOOR: ...speaking again from personal experience, court orders trumped anything that we as a healthcare facility might have on-line... [LB226]

SENATOR LARSON: Okay. [LB226]

SENATOR GLOOR: ...and would release those then to the courts. [LB226]

SENATOR ASHFORD: Thank you, Senator Larson. Yes, Senator Coash. [LB226]

SENATOR COASH: Thank you, Chair. Senator Gloor, since you introduced this, I mean you've got a lot of different entities that fall under public safety officer and a lot of schools have school resource officers in their school. Most Lincoln high schools all have resource officers, an LPD officer. Did you consider how or have you considered how this might affect children, given that this can occur...that we have public service officers in the schools and how you think that might play out? It's something I hadn't considered. [LB226]

SENATOR GLOOR: No, and I'm trying to think of whether we are exacting enough in this legislation that we don't have to worry about that. But I would leave that to some of the other testifiers to make note of and try and answer. [LB226]

SENATOR COASH: Okay. Thank you. [LB226]

SENATOR ASHFORD: Thank you, Senator Gloor. [LB226]

SENATOR GLOOR: Thank you very much. [LB226]

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SENATOR ASHFORD: Senator Harr, did you have a question of Senator Gloor?
[LB226]

SENATOR HARR: I'll wait for Mr. O'Brien. [LB226]

SENATOR ASHFORD: Okay. Hate to bring him back and...good afternoon. [LB226]

COREY O'BRIEN: Good afternoon, Mr. Chairman. Mr. Chairman and Senators of the Judiciary Committee, my name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n, and I'm an assistant attorney general with the Drug and Violent Crime Division of the Nebraska Attorney General's Office. Today I appear on behalf of Attorney General Jon Bruning to express support for LB226. In my employment with the Attorney General's Office over the past eight years, I've had a tremendous opportunity to travel across the state of Nebraska prosecuting cases and conducting legal training. As a result of those travels, I've had extensive and close personal contact with many of the state's criminal justice professionals, including law enforcement, corrections personnel, and juvenile detention workers. Without question, the conduct sought to be prescribed in LB226 is the issue I am asked about and implored to take action on the most frequently and passionately by this group. There's a tendency among some, mostly among those outside the criminal justice realm, to believe that the conduct sought to be prescribed by LB226 is an inherent, albeit unpleasant, part of the job that naturally goes along with the territory of serving as a public safety professional. Additionally, many of these same people believe that persons who choose to work in this arena knew of this potential consequence before signing on, assumed the risk of such occurrences, and as a result, should develop a thicker skin. However, I appear here today before this committee asking you to resoundingly reject these commonly held notions and beliefs and advance LB226 to the floor for full consideration by the body. Simply put, the conduct sought to be prescribed by LB226 goes well beyond taunts and insult, and amounts to repulsive behavior that defies any civilized society's standards of morality and decency. These insidious acts inflict real harm not just upon an individual's most precious asset--their dignity--but more importantly upon their physical and mental well-being. For those inclined to believe that the conduct sought to be prescribed by LB226 is just an unpleasant facet of the job that public safety professionals should just quietly endure, I'd ask you to consider this: Every time an arrestee or inmate spits upon or throws bodily fluids at a public safety official, there are significant consequences beyond cleansing that that official must endure. Specifically, in this day and age of rampant infectious disease, they must submit themselves to medical testing and endure days, weeks, and sometimes even months of mental anguish awaiting to learn if they've contracted an infectious and potentially deadly disease. This is a high price for anyone to have to bear, especially those dedicated to keeping us and our families safe. The least we can do is repay them for this sacrifice; to say once and for all that this is not acceptable behavior, it won't be tolerated further, and if it continues there will be consequences.

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That is precisely what LB226 is designed to do and I ask you to advance LB226. I look forward to any questions you may have. Thank you. [LB226]

SENATOR ASHFORD: Thanks, Corey. Any questions? Senator Harr. [LB226]

SENATOR HARR: Yeah, and I'm going to have a couple of questions for you, Corey, Mr. O'Brien. [LB226]

COREY O'BRIEN: Yes, sir. [LB226]

SENATOR HARR: It's been eight years? Wow! And I guess I have...and this piggybacks with Senator Lautenbaugh's questions. Public safety officers. I guess I have a problem with the public safety officers and the definition that it doesn't include EMT, that it doesn't include firefighters, and that it does include employees of Health and Human Services. Can you explain how you came upon that definition? [LB226]

COREY O'BRIEN: Again, this is Senator Gloor's bill and we would defer to his ultimate decision on that issue, but let me just tell you in terms of where I came up with the inclusion in drafting. Any time you draft something like this, you run the tendency of, you know, leaving somebody out. So I started with the baseline of, what does current law provide for in other assault statutes regarding assault on an officer? As you'll recall, last year, Senator Flood, for instance, added HHS workers who are designed to monitor people under the sex offender registration. So that's why those people were included. And again, there were a few inclusions beyond what's provided for in statute. But again, a lot of that comes from the travels across the state and hearing these concerns from various people. And again, we don't mean to offend or leave anybody out, and we'd certainly listen to anybody that we have maybe left out. But ultimately it is Senator Gloor's bill and we would work with him hand in hand to figure out who should be included and maybe who is included that shouldn't be. [LB226]

SENATOR HARR: Okay. And now that...and you brought up a couple of good points that I want to follow up on. As far as sex offenders, it says on page 4, lines...well, 3 and...I'll start on line 3, "...if the person committing the offense is committed as a"--and this is what I have a question with--"dangerous sex offender under the Sex Offender Commitment Act." What is a dangerous sex offender as opposed to a sex offender? [LB226]

COREY O'BRIEN: A dangerous sex offender is someone that a court has actually judicially determined to be subject to a mental health commitment under the Sex Offender Commitment Act. So there is a special process in the Sex Offender Commitment Act that provides for certain sex offenders who fit within the categories of dangerousness, that they've somehow developed a mental disease, and a judge has determined or a mental health board has determined--usually it's the mental health

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board--has determined that they have such a disease that they qualify as a sex offender subject to commitment in one of the regional centers. [LB226]

SENATOR HARR: Okay. I guess that does answer my question as to...and then I assume a dangerous sex offender is defined somewhere else too? [LB226]

COREY O'BRIEN: It is. It's defined in the Sex Offender Registration Act...or I'm sorry, the Sex Offender Commitment Act. [LB226]

SENATOR HARR: Commitment, yeah. [LB226]

COREY O'BRIEN: And again, that was just to remain consistent with what Senator Flood got accomplished, and I can't remember the LB number from last year, but he had that bill. And I just wanted, from a baseline, started there with what other statutes had provided for assaults on officers. [LB226]

SENATOR HARR: And then...and I do not know the answer to this one, which is always dangerous to ask, but I'm going to go ahead and ask it anyway: Are there administrative penalties currently if you are imprisoned for, let's say, the situation Senator Gloor gave with the urine constantly being thrown? Is there currently anything that can be done either administratively or criminal actions that can be brought? [LB226]

COREY O'BRIEN: A guy that is in...my understanding is a guy that is in the pen or a correctional facility, state correctional facility, will have this written into his record and can face sanctions, including, you know, loss of good time or other restrictions such as solitary confinement or something like that. The view of our office and others was that, you know, those sanctions are nice and all but when an inmate stabs their roommate or stabs a corrections guard, they still face criminal penalties as a result of that, in addition to any sanctions that are imposed by the institution. [LB226]

SENATOR HARR: Well, and I guess that's what I'm getting at, is does this not currently fit under assault on an officer? [LB226]

COREY O'BRIEN: No, it does not. [LB226]

SENATOR HARR: And what is the difference then? [LB226]

COREY O'BRIEN: The statutes and the case law that's resulted from the assault on an officer statute--particularly assault on an officer, third--requires one of two things: some type of pain or obvious injury, or the threat, eminent threat of such injury or pain. And the courts have generally said that spitting or throwing bodily fluids on somebody doesn't inflict any type of injury beyond humiliation. So there's no subsequent pain threshold or injury threshold that rises to the level that the third-degree assault on an

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officer statute covers. [LB226]

SENATOR HARR: Okay. And then one last one, and I think nothing too crazy. You've now collected basically bodily fluids, DNA, off of individuals. Is there anything that limits law enforcement, it's now in their hands, from using it for other purposes? [LB226]

COREY O'BRIEN: You're talking about somebody that there's been a court order...well, I mean I think that the way that the statute is written, it says that such use shall be limited to the determination of whether or not they have one of these communicable diseases. So I think that there is that inherent limitation in the wording of the statute itself. [LB226]

SENATOR HARR: Well, I think it actually says "that may assist with the determination of whether or not." So may assist but it doesn't limit it to. I mean, yeah, okay, it may assist. Fine. But it doesn't prohibit anything in there, the language in here, that prevents law enforcement from saying, oh, we have his DNA or her DNA now or whatever, and using it in other areas. Do you think there should be language to that degree? [LB226]

COREY O'BRIEN: The design of the statute is not designed to give invitation to law enforcement officers to use it for any purpose they see. So if there is a concern about that, certainly that would be something that I would be interested in looking at and I believe my office would, and perhaps Senator Gloor as well, to make sure that this system isn't being abused for other purposes. So that's not what the intent of the statute is. [LB226]

SENATOR HARR: Okay. And then finally, and then I'll leave you alone, probation officers are included as public safety officers. I guess I understand under every other one of these situations it's someone who's in confinement, and with a probation officer they're not in confinement. Is there a reason why they're included in there? [LB226]

COREY O'BRIEN: Well, I guess I would take somewhat exception with the fact that confinement of some type or another is really required under the statute. I think it applies to anybody. If a law enforcement officer happens upon another individual and just stops and questions them or is just walking down the street, walking his path, and somebody spits upon him, that there's no requirement that they actually be in physical custody or any kind of detention, that they still qualify under this statute. And again, it was a situation of including probation officers. Again, the feedback that I personally received, as well as the Attorney General and others in my office, of this being a real problem amongst probation officers. And we tried to include people that we had situations that we could point to and say, yeah, this is occurring amongst these classes of people. And again, we didn't try to exclude anybody purposely or include somebody that needlessly should have been included. [LB226]

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SENATOR HARR: Then why weren't parole officers included? [LB226]

COREY O'BRIEN: That was not part of the feedback that I received in terms of them being subject to this, but I would say that potentially that parole officers are covered because they are members or employees of the Department of Corrections. So I don't know that...personally, I think it might be redundant given the fact that we do say employees of the Department of Corrections, that they are already covered. [LB226]

SENATOR HARR: Ah, I did not realize they were. Okay. They don't fall under the courts? I have nothing...well, just one other question and then I promise I'll leave you alone. The sentence, the good time or the "shall not include any credit for time spent in custody prior to sentencing," is there any other statute that has that language in there? [LB226]

COREY O'BRIEN: All of the other assault on an officer statutes. That's where that language comes from. [LB226]

SENATOR HARR: That's what I was trying to remember. That's what I was looking at. Okay, thanks. [LB226]

SENATOR ASHFORD: Thanks, Corey. [LB226]

COREY O'BRIEN: Thank you. [LB226]

SENATOR ASHFORD: How many testifiers do we have on this first bill, LB226? Okay. Next proponent. Good to see you again. [LB226]

SHAWN EATHERTON: Good afternoon. It's good to see you. It's good to see all the members this year. Mr. Chairman, I'm Shawn Eatherton. I'm the Buffalo County Attorney, E-a-t-h-e-r-t-o-n. I'm here on behalf of the Nebraska County Attorneys Association in support of this bill. I often sit back and I like to listen to the senators when they come up here, and sometimes I'm familiar with the story, sometimes I'm not. I'm not 100 percent sure if the senator was speaking about my correction officer in Buffalo County, but I can tell you that's what happened in October. We had somebody who was just doing their job. She goes into a particular living unit, and while they're sitting there with what looks like they're eating their meal, one of the inmates had saved his urine. And as she came in, he had it in a drinking cup. He threw what was liquid on her. She immediately...it was in her nostrils, in her mouth, in her eyes, in her hair. Immediately smelled that it was urine; subsequently was tested. It was urine. And just based on that type of contact, particularly how funny all the inmates thought because they knew nothing could happen to them, they all...many of them have been through the correctional system or through the jails, and they call it polluting or gassing somebody. They don't feel there's any recourse other than losing good time. And if they are not, in

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fact, serving a sentence, then you're not going to lose good time if they're still waiting or pending trial. And so the reaction of those inmates and watching them, because it's on video, watching them laugh, is somewhat disturbing. And that correctional officer, who was serving the people of Buffalo County and subsequently serving the people of the state of Nebraska, is no longer in employ and there's nothing I could do to help her, nothing we could do to (a) hold that particular inmate accountable or to deter future ridiculous behavior. Not only is the behavior abhorrent, disgusting, but, quite frankly, it's dangerous. We talk about the communicable diseases, the things that we're asking them to go into close quarters every day and deal with. I certainly am asking for this bill to be put to the body and I'm asking for its support. It's dangerous and it's important. [LB226]

SENATOR ASHFORD: Thanks, Shawn, and we always appreciate your testimony. Any questions of Shawn? Seeing none, thanks. [LB226]

SHAWN EATHERTON: Thank you. [LB226]

SENATOR ASHFORD: Next proponent. Anybody that wants to testify can certainly...if you want to come up, that's fine, I mean, and just sit in the front. [LB226]

JERRY STILMOCK: (Exhibit 1) Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association, in support of Senator Gloor's bill and others that have signed on LB226. When my client saw this bill, as I directed it to them, it reminded me of another portion of the statutes over in the health area. And in the health area volunteer firefighters and paid firefighters, as well as EMTs, are included for a remedy that allows somebody inflicted with fluid, bodily fluid, to be able to obtain testing from the person that threw or caused the item to be tossed about on the person, and they can do that either through voluntary request or a district court action. And those sections are over in Chapter 71, at 71-507 through 71-513. And if you choose to take action on the senator's bill, we certainly request that the volunteer fire and the volunteer EMTs be included as well. There is a portion in the other healthcare statutes at Chapter 71, it's 71-511(1) that talks about the limitation of the use of the evidence collected and whether or not that strikes to what the committee may want to use. But there is similar language that simply states that it's not, in layman's terms, it's not available for any other use. And I'd ask that the committee kindly consider the amendment to bring in the volunteer firefighters as well as the volunteer EMTs. [LB226]

SENATOR LATHROP: Very good. Thanks, Jerry. Any questions? I don't see any. [LB226]

JERRY STILMOCK: Thank you. [LB226]

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SENATOR LATHROP: Sheriff, welcome back. [LB226]

JEFF DAVIS: Thank you. Good afternoon. My name is Jeff Davis. I'm the sheriff in Sarpy County. I'm here representing the Nebraska Sheriffs' Association as well as my department, which uniquely, I have 127 sworn that operate not only on the street in normal patrol duties but we run a 148-bed jail facility, and I also run a staff-secure detention facility with 24 beds. I want to comment on a couple things and not be repetitious, if I can do that. I know somebody mentioned there were no known cases of transmittal in regards to HIV. That is not the same, I think, for hepatitis B and C, which should be noted. And also each time, if you put yourself in those shoes of that individual that may have had feces or urine thrown on them, or come in contact with saliva, there's a process that we have to go through. And we take those individuals, obviously, to an emergency room and they're basically out of service for a period of time, let alone have to wait for results of not only what they've been tested for to find out if they may have been infected. And I think that's important to note. Also, somebody mentioned, well, don't you have some sanctions? We do have sanctions in our jail facility for somebody who may throw feces or urine on someone, but we can't arrest them because it's not a crime. And, in fact, if somebody takes a swing at one of my deputies in the jail facility, they can be...even if they don't hit them, they can be arrested for assault or attempted assault, but if they threw a cup of urine on them, they can be sanctioned but they can't be arrested. And that's one of the things we'd like you to note or at least understand, by passing this bill it would be very helpful in that manner. Also you mentioned DNA, Senator, and I wasn't sure, I couldn't hear very well in the back. But there's not a DNA sample for everybody, only those that have been convicted of a felony, and so there would be a large area of individuals that we would not have a DNA sample from. So go ahead if you wanted to question. [LB226]

SENATOR HARR: Oh, when your time is up, I'll ask you about that. [LB226]

JEFF DAVIS: And one other thing, I know everybody wants to add people to this, but in defense of the people that work for me in my juvenile detention facility, we're not certain that the way it's worded would cover them, and I would offer or suggest, and I'll read this to you: an employee of a juvenile secure/staff-secure facility operated by a county sheriff's department or as a consortium of counties that provide residential confinement and/or electronic monitoring services. Our facility is a staff-secure facility, but we deal with some very serious individuals that have mental health issues as well as are facing criminal charges on a daily basis. And with that, if you have any questions... [LB226]

SENATOR LATHROP: Thanks, Sheriff. Senator Harr. [LB226]

SENATOR HARR: If I...yeah, just quickly and just to clarify for the record, what I was getting at is if you take someone's bodily fluids--blood, for instance--to check to see if they have acquired immune deficiency syndrome, there would be nothing that would

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prevent you from taking that same vile, taking a little bit off, and doing a DNA search on that and then writing a DNA. [LB226]

JEFF DAVIS: Yes. [LB226]

SENATOR HARR: So that was my concern. [LB226]

JEFF DAVIS: All right. Thank you. [LB226]

SENATOR LATHROP: Very good. Thank you. [LB226]

SENATOR HARR: Thank you. [LB226]

ROSS STEBBINS: Good afternoon, members of the Judiciary Committee. Ross Stebbins, R-o-s-s S-t-e-b-b-i-n-s, president of FOP Lodge 8, representing the 400 hardworking men and women of Douglas County Corrections. I've been a corrections officer at the jail for 21 years. I am currently a sergeant assigned to case management. I've been bitten and spit on more times than I care to remember. An officer I represent developed hepatitis C from an inmate who threw a cup of urine in his face. Corrections officers deal with the threat of having bodily fluids thrown on them every day. LB226 is very important to corrections officers who put their lives on the line every day for the citizens of Douglas County. The penalties LB226 provides are significant and will help deter some inmates from assaulting us, and I urge each of you to support LB226. I thank you for your time and stand for any questions. [LB226]

SENATOR LATHROP: Very good. Thank you for the testimony. I do not see any questions. [LB226]

ROSS STEBBINS: Thank you. [LB226]

SENATOR LATHROP: Thanks. [LB226]

JULIE DAKE ABEL: (Exhibit 2) Good afternoon. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l, and I am the executive director of the Nebraska Association of Public Employees, AFSCME Local 61. We are strongly in support of LB226. As an organization with a membership consisting of numerous public safety officers, as well as people that work in the youth centers and our folks that work at the Norfolk Regional Center that deal with sex offenders throughout state government, we feel that the adoption of LB226 is necessary to protect those individuals from undue harm. These officers and workers are already placing their lives, basically, when they are working with these individuals. They are in positions of high stress and possible confrontation. By further criminalizing the behavior of those who may have a communicable disease that would intentionally try to infect one of the officers through a bodily fluid assault, we

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believe that this bill should be passed. Many of our members, unfortunately, have witnessed and been victims to assaults, which in some cases have left members jobless and with long-lasting traumas even well after the event. We do think that down the road that we would like to work with the legislative body in maybe approaching the issue of fully compensating the victims of these assaults if, in fact, they are unable to perform their job duties or left with lifelong psychological scars. As you heard testified previously, the Department of Corrections, within the last year I believe they stated there was 223 assaults. Unfortunately, the officers and employees that do work at the facilities do get bodily fluids thrown on them, and it is a very scary moment for them and certainly can be a significant health hazard to them. So we would like to thank Senator Gloor for introducing LB226. I would also like to say that I may not be able to stay for the entirety of this proceedings this afternoon so I did also submit a letter in support of LB242 that will be heard later. [LB226]

SENATOR LATHROP: Very good. Thanks, Julie. Any questions for the witness? I see none. Thanks for coming down. [LB226]

JULIE DAKE ABEL: Thank you. [LB226]

SENATOR LATHROP: Next proponent of LB226? (See also Exhibits 32 and 33) Anyone here in opposition to LB226? Why don't you come on up. We'll have one of you come up and the other one get in kind of standby, if you wouldn't mind. Maybe we can keep things moving along on a Friday afternoon. [LB226]

JORDAN DELMUNDO: (Exhibit 4) Good afternoon, Judiciary Committee. My name is Jordan Delmundo. I am the grants and public policy manager from the Nebraska AIDS Project. [LB226]

SENATOR LATHROP: Sir, can you spell your last name for us? [LB226]

JORDAN DELMUNDO: Yes. It's D-e-l-m-u-n-d-o. Nebraska AIDS Project is the only AIDS service organization in the state of Nebraska, serving the entire state with offices in Omaha, Lincoln, Norfolk, Kearney, and Scottsbluff. I'm here today not to voice opposition to the protection and well-being of public safety officers but to voice opposition to LB226, specifically the language in the bill that singles out people living with the human immunodeficiency virus, or HIV. I want to be clear that NAP believes the safety of law enforcement and public safety officers is of paramount concern, and we recognize the intent of this bill is to do just that: protect public safety officers. From that perspective, what this bill attempts to do is a worthy endeavor. However, we must look at this bill from other perspectives to fully understand its impact on the residents of the state. I'm asking you to also look at this bill through the perspective of public health and the 30-year-old battle against the HIV epidemic. The broad language in Section 2 of LB226 will only confuse and reinforce misconceptions and stigma surrounding HIV and

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AIDS. According to national surveys on HIV and AIDS conducted by the Kaiser Family Foundation, between 34 and 40 percent of Americans harbor at least one misconception of HIV, including the misconception that bodily fluids, like saliva, urine, or mucus, can transmit HIV. The proposed language of this bill is contrary to established science. There are only four fluids scientifically proven to transmit HIV: blood, semen, vaginal secretions, and breast milk. This bill, by associating the transmission of HIV with bodily fluids that absolutely do not transmit HIV, will contribute to misunderstanding, undermine public health efforts, and may lead to potential discrimination against law-abiding citizens who may live with HIV. Anecdotally, nine out of the ten people that those of us at Nebraska AIDS Project speak to at health fairs still believe that saliva transmits HIV. In addition to increasing stigma, LB226 gives people a disincentive to get tested due to fear of prosecution and greater penalty. Section 2 of LB226 also includes language that codifies the breach of doctor-patient confidentiality, and this section would allow for the subpoena of an individual's individual medical records and that could jeopardize a patient and doctor's relationship. If medical records are subpoenaed, there's also other information in there that might get potentially sensationalized in the press. When individuals learn that they are HIV positive, they are more likely to seek early medical treatment, which in turn leads to better health outcomes and as well as financial savings in the long run. According to the Centers for Disease Control, individuals who submit to HIV testing and learn that they are HIV positive, adopt behaviors to reduce the risk of transmitting HIV to others. I want to point out that according to the American Medical Association, the Journal of the American Medical Association, and Whittier Law Review, most HIV-specific criminal laws are defective even on their own terms, poorly drafted, or covering conduct that poses no risk. I'll just point to you guys in my written testimony, there's a study that looks at healthcare workers who work with someone who is living with HIV who had blood, mucus, all of the stuff, and bit these people, and it cited in here that none of them...there was little or no risk of them getting HIV transmitted to them. [LB226]

SENATOR LATHROP: Okay. We'll take a look at it. [LB226]

JORDAN DELMUNDO: All right. [LB226]

SENATOR LATHROP: We promise that we will. We appreciate you bringing it by. Let me see if there's any questions. Senator Larson. [LB226]

SENATOR LARSON: Thank you, Senator Lathrop. I asked this question of Senator Gloor at the beginning about the mucus and whatnot and saliva, and he brought up the concern if there was blood in the saliva... [LB226]

JORDAN DELMUNDO: Correct. [LB226]

SENATOR LARSON: ...or in the urine or in the stool, that at that point it could be

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transferable. Is that your understanding of it too? [LB226]

JORDAN DELMUNDO: I will say that Senator Gloor is correct but I would qualify that statement with this: The threat exists, but I would ask you, to what degree? Just because there's a little blood present in any other fluid doesn't mean that there will be transference. And unless there's a lot of blood, the chances of transference are very miniscule. You can look that up. You can check the CDC. You can even ask infectious disease at Nebraska Health and Human Services. [LB226]

SENATOR LARSON: But the threat exists. [LB226]

JORDAN DELMUNDO: Yes. [LB226]

SENATOR LARSON: Thank you. [LB226]

JORDAN DELMUNDO: Yep. [LB226]

SENATOR LATHROP: Senator Council. [LB226]

SENATOR COUNCIL: Yes. And thank you, Mr. Delmundo, for appearing. I just have a comment. I appreciate you coming and testifying and offering this evidence. In an interest of full disclosure, as a former member of the board of the Nebraska AIDS Project, when I first read LB226, that was...one of the concerns you expressed was a concern I have and that during my term on the board trying to dispel the myths around AIDS and the virus and how it's transmitted, and looking to eliminate, when possible, those things that perpetuate those myths and place individuals at even greater disadvantage in our society. So I appreciate you coming forward and it certainly will be one of the issues that I discuss with my colleagues as we consider LB226. Thanks. [LB226]

SENATOR LATHROP: I think that's it. Thank you for your testimony. [LB226]

JORDAN DELMUNDO: All right. Thank you. [LB226]

AMY MILLER: (Exhibit 5) Good afternoon. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I am legal director for ACLU Nebraska. We oppose LB226 for the same concerns about public policy and health issues that the Nebraska AIDS Project outlined, but I want to emphasize instead some of our due process concerns. The reason that you have felonies for assault is the inherent need of bodily harm. LB226 is proposing to criminalize behavior that does not in fact create any bodily harm. If you look at all the other assault statutes, whether you're talking about assault on an officer or assault in general, the key phrase requires some harm, and yet the proposal here is regardless of whether or not the body fluid even touches the individual they will be guilty of a crime.

Specifically, on page 2 at line 6, it suggests whether or not it strikes or it simply is thrown, propelled, expelled, or emitted towards the individual. In other words, someone who involuntarily vomits, someone who sneezes during a traffic stop, or someone who does it intentionally but the bodily fluid never reaches the individual affected, each of these people will be exposed to criminalization. There is no other example that I'm aware of, although certainly my legal knowledge does not extend to all four corners of the world, I can't think of another example of where we have ever criminalized behavior that does not in fact cause bodily harm and called it an assault. And I want to emphasize that whether you're talking about a Class I misdemeanor or the Class IIIA felony, that we are talking about putting people behind bars. And as cited in my testimony, we are already groaning under a system that has got too many people incarcerated, and many of those people do have serious medical or mental health needs which cannot be met in the current budget crisis. One of our prisons, state prisons, is currently at 231 percent capacity. We don't need to criminalize and create new felonies and put people behind bars. Even a Class I misdemeanor does carry one-year imprisonment. For these reasons, we suggest that if you are going to move LB226 forward, that you, at the very least, tie the harm to an actual bodily harm. It can't simply be that I made an effort to sneeze at the officer and nothing happened. There has to be an actual harm for it to be labeled as an assault. Overall, for all of these concerns, including the privacy concerns with medical records that were outlined previously, we urge you to keep LB226 in committee and indefinitely postpone it. [LB226]

SENATOR LATHROP: Very well. Senator Lautenbaugh. [LB226]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. Thank you for coming today, Amy, as always. Is it your belief that throwing urine at someone could not constitute an assault? [LB226]

AMY MILLER: I believe it could actually be charged under the existing statutes. There is an interesting interplay between the way that we've differently categorized assault on an officer and our separate assault laws. If you compare the two, for example, we do treat the two differently. And although I'm sensitive to the Attorney General's comments about preconceptions, that we somehow just expect these people to deal with it as part of their job, which I think is wrong, at the same time assault on an officer statutes do have a higher threshold of harm than mere assault in the general context. I would propose that the county attorneys could be considering filing assault charges with these matters and let the courts sort it out. I'm not clear why in any of these categories, people who have been psychologically traumatized, why the pressure is not on the city or county attorney to try to bring charges and see what happens. [LB226]

SENATOR LAUTENBAUGH: Thank you. [LB226]

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SENATOR LATHROP: Very good. Thanks for coming down. Any other person here in opposition? Anyone here in a neutral capacity? [LB226]

MARY CAMPBELL: Senator Lathrop and members of the committee, my name is Mary Campbell, C-a-m-p-b-e-l-l. I'm the assistant superintendent for general administration and government relations at Lincoln Public Schools. I want to use the opportunity of a neutral category to just raise a couple of questions for you to ponder, and I appreciate that earlier Senator Coash voiced one of them. At the onset, I do also want to acknowledge the great high regard that we hold for resource officers that are in all of our high schools and the wonderful working relationship that we have with them. Questions are a couple of for instances. Number one, is it the sponsor's intent to criminalize behaviors of, for example, developmentally disabled students or some of our students who have very severe behavioral health issues where a spitting episode may certainly happen in a confrontational or very high stress situation with those students? Secondly, if it is the intent of the sponsors and of this bill, if it were to go forward, to penalize those kinds of actions involving students and officers, then are we then also conversely condoning the same kind of action on the part of the student against a teacher or an administrator or other staff, support staff? In the first instance, it strikes us that maybe the bill is overly broad, and in the second example that it's maybe too narrow. But I just wanted to interject another perspective on the underlying intent of this for the school setting and hope that you'll consider that. [LB226]

SENATOR LATHROP: Very good. Thanks, Mary. I see no questions. [LB226]

MARY CAMPBELL: Thank you. [LB226]

DOUG NABB: Senator Lathrop and Judiciary Committee, my name is Doug Nabb. I'm a lobbyist for the Fremont Public Schools and also a former teacher who's been assaulted a couple of times, according to the terminology. But our concern is the same as what Mary brought with Lincoln Public Schools. First of all, every school has a public...or our schools have public safety officers in them. If you're going to have a conflict occur, it possibly will be with the kids who are developmentally disabled, and you have them up to 21 years of age. So the problem, if there is a conflict, the first person they're going to call is that public safety officer. And obviously, kids are kids. They make mistakes. They don't rationalize some things at times, and unfortunately I'm not so sure that the way this is written that it wouldn't be an undue penalty upon that student for actions that they later on would have regretted or taken back. With that, I'll just conclude. And anything...any questions that you have? [LB226]

SENATOR LATHROP: All right, let's see. I don't see any questions. [LB226]

DOUG NABB: Thank you. [LB226]

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SENATOR LATHROP: Thank you for your testimony. Anyone else here in a neutral capacity? I see none. Senator Gloor, would you care to close? [LB226]

SENATOR GLOOR: Thank you, Senator Lathrop. Committee members, I'll be brief. We are passing out the amendment I referenced earlier. I would go back to the dialogue we had about who all should be included and you see already there are concerns that this is too broad. And so as we begin the process of discussion of who else should be included in it, I think we begin to increase exponentially the degree to which people become uncomfortable that raise questions and issues. Let's be clear, based upon what we know, based upon the testimony, based upon the problem we have, we're talking about a very small subset of society who plot, who scheme, who plan to do this despicable act, and that's what we're trying to put a stop to here. I trust the judgment of county attorneys, at least the county attorneys that I know in central Nebraska are wise individuals who have no interest in expanding a statute like this to affect the developmentally disabled. That's not what we're talking about in this piece of legislation. And I am mindful of the fact that there are challenges in the public school system. I have a sister-in-law who is a principal and has stories that, of course, are sad stories about how she's been treated and how faculty members were treated. And as we know from, unfortunately, the Millard South scenario, they also are in harm's way. But my caution is let's be careful in the broadening of this, if that's the decision of the committee. But if it's what the committee decides, I will certainly be supportive, trusting your judgment. And as it relates to the concern from advocacy groups, again my only comment would be let's remember who the victim is here and let's remember that from a standpoint of public health we still have and we joke about issues around statutes that exist in some communities that make it illegal to spit on the sidewalk. This wasn't done as a sign of disrespect for the sidewalk or because the clean community systems got cranked up back in the 1800s. It was because spitting was seen as a public health hazard because of the epidemic of tuberculosis we had back in those days. It was a public health issue. And we have in many ways come full cycle with issues related to public health and communicable diseases, that in this case for both could be life threatening to public safety officers. So I would finish with those few comments. And if there are any last questions I'd be glad to answer them, otherwise thank you for your consideration. [LB226]

SENATOR LATHROP: Thanks, Senator Gloor. Are there any questions? I see none. [LB226]

SENATOR GLOOR: Thank you. [LB226]

SENATOR LATHROP: It's good to have you here. [LB226]

SENATOR GLOOR: Nice to be here. [LB226]

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SENATOR LATHROP: Enjoy your weekend. [LB226]

SENATOR GLOOR: I'd stay, but things to do, people to see, bills to introduce. [LB226]

SENATOR LATHROP: Yeah, we understand. We understand. [LB226]

SENATOR HARR: Yeah. [LB226]

SENATOR LATHROP: Next up would be...looks like LB402 and that brings us to Senator Gwen Howard. [LB402]

SENATOR HOWARD: That's right. LB402. [LB402]

SENATOR LATHROP: Welcome, Senator Howard. [LB402]

SENATOR HOWARD: Thank you. Thank you, Senator Lathrop. You ready? [LB402]

SENATOR LATHROP: You may proceed when you're ready. [LB402]

SENATOR HOWARD: Thank you. Good afternoon, Senator Ashford...or Senator Lathrop, as the case may be, and members of the committee. For the record, I am Senator Gwen Howard, that's spelled H-o-w-a-r-d, and I represent District 9. Today I am bringing to you LB402 on behalf of the National Association of Social Workers, Nebraska Chapter. Like policing our streets, fighting fires, or guarding prisoners, social work is a difficult and sometimes a dangerous occupation. Unlike police or firefighters, social workers do not always enter the profession with the knowledge of all the risks. Many are insufficiently trained in safety, and social workers are almost always entering precarious situations alone. To quote NASW President James Kelly, safety is not a topic that is comprehensively covered in social work school, and social workers are not typically prepared with adequate self-defense training, conflict resolution techniques, or resources to prevent violence. Social workers are expected to enter people's lives when they may be at their worst, and I know that personally; solve seemingly intractable problems; help clients with life-threatening challenges; and work with people in their most vulnerable moments. It's not only social workers who are often unaware of the safety risks inherent in the profession. Most of us would be surprised to learn that nationally 70 percent of front-line social work members report violence or threats of violence on the job. In fact, most states that pass legislation on this issue do so only after tragedy has occurred. LB402 is based on Kansas and west Nebraska law introduced only after social workers were murdered on the job. Kentucky and Massachusetts are also working on legislation in response to violent deaths of social workers. Action on LB402 could prevent this kind of...I don't want to say misfortunate or incidents, far more serious than that, but could prevent this from happening in Nebraska. LB402 would address social work safety issue in two ways. It would increase

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the penalty for assault from a Class I misdemeanor to a Class IV felony. In addition, it would require that social workers certified or licensed under the Mental Health Practice Act are employed by the department or contractors of the department receive six hours of safety training. Safety training is left intentionally broad to allow the agencies to tailor the training to their environment. Training would include de-escalation techniques, crisis intervention, physical training, or even something as simple as how to arrange an environment to allow an escape. Social workers should have as many tools as possible to keep themselves and their clients safe. There has been some discussion that perhaps this bill should include more than just social workers. I know that NASW has an amendment about other mental health practitioners and you'll have the opportunity to discuss that. NASW is also ready and willing to provide details to answers to any of your questions, and I thank you for giving me this opportunity regarding LB402. Just a couple of comments I would like to make in addition to this. There is a fiscal note, and I would question the amount on this for a couple of reasons. Number one, all the training dollars that are used for social workers--case managers, as they have been called--with the department has been federal money that we've gotten. It's not state expenditure dollars. And this has been the case for decades now. It's nothing new. And secondly, the department has recently shifted the cost of training on to their contractors, so the private contractors that we now have doing child welfare reform are expected to do this training, and the safety training would certainly be included in the agenda for their new workers and their ongoing staff. And giving you this, and I know sometimes our presentations seem kind of a little dry and impersonal, I'm going to give you just a little brief story. All the years that I did social work for the department, and yes, oftentimes we went out alone, and I was often real happy that I wasn't in investigations because those people go to the door to tell someone that there's an allegation of child abuse and they don't know what's on the other side of that door. I did have an incident, this is one of really many, where I went to a housing project in Omaha one day and I took a new worker with me. I went to see a client. This particular housing project went down, you entered from the top and you went down. And there was a central courtyard and there was really only one way out and that was by going back up. And after I talked to my client, and her children were in foster care which she wasn't happy about to begin with, and I was taking the new worker, we were leaving, and my client steps out behind us. And right above, in the apartment right above, another person, a woman steps out. And my client looks up at her and said, "You know, I'm going to get my gun. I've had it with you." They get in an altercation, basically. And the new worker is panic-stricken. The new worker doesn't know what to make of this because usually in a housing project, when somebody says they're getting their gun, they are pretty serious. So I grabbed ahold of the new worker's arm and I pulled her up the steps, and I said to the client, "You know, look at the time. We've got to get the state car back," and kind of diffused the situation. Because what are you going to do? I am not armed. I'm not out there carrying a gun. But people don't know that and people can panic and people can escalate a situation that they had no intention to make worse. I think this is an important issue. I ask you to give it your due diligence, as I know you will--as I know you will. I'm not going to stay for

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closing because right now we're in a discussion about peer liability and hospital liability. Yeah. I'm beginning to think this is the session of immunity, frankly, but...(laughter). [LB402]

SENATOR LATHROP: Where is this happening at? [LB402]

SENATOR HOWARD: This is over in Health Committee, yeah. You would like to be there. [LB402]

SENATOR LATHROP: Hmm, don't know what they're doing with that. [LB402]

SENATOR HOWARD: I hope you don't have to deal with it later on. But there are people here that are lined up and can answer your questions and will do a good job. [LB402]

SENATOR LATHROP: Okay. Very good. Senator Coash. [LB402]

SENATOR COASH: Thank you, Vice Chair. Senator Howard, as I was looking at this bill, my wife is a social worker, certified social worker. [LB402]

SENATOR HOWARD: I'm glad to hear that. [LB402]

SENATOR COASH: And her whole career has been in healthcare social work. In other words, she's worked in hospitals and long-term care. [LB402]

SENATOR HOWARD: Good. Good. Right. [LB402]

SENATOR COASH: And safety for the type of social work that she does isn't really an issue. I mean she's working with...mainly she's worked with the elderly. [LB402]

SENATOR HOWARD: I understand. She's probably helping people to make plans. [LB402]

SENATOR COASH: That's right. And so for her to...for people who are in similar positions to have to go through some training on safety may not be needed. So I was wondering if you've thought about that. [LB402]

SENATOR HOWARD: Well, and that's the very reason that I said it would be tailored to situations and environments. In her case, she probably wouldn't need to be prepared to go out and deliver information to someone in their home regarding allegations of physical or sexual abuse of their child,... [LB402]

SENATOR COASH: Right. [LB402]

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SENATOR HOWARD: ...and lucky her, frankly. And so it might be a different safety issue. There might be some other concerns that she would have and I can't think of what it would be in a hospital environment but there may be other things and that could certainly be adapted or modified. [LB402]

SENATOR COASH: Sure. I just...that was...I mean social work is... [LB402]

SENATOR HOWARD: No. Absolutely. [LB402]

SENATOR COASH: ...such a wide field and... [LB402]

SENATOR HOWARD: It is. It's very broad and I think...and considering that, I think it's really important that we give social workers, we give people that go into these unsafe homes--frankly, very unsafe homes--tools so that they're not going to...that nothing is going to happen to them or at least we can...as best we can prevent it. [LB402]

SENATOR COASH: Okay. Thank you. [LB402]

SENATOR LATHROP: Senator Council. [LB402]

SENATOR COUNCIL: Yes, thank you, Senator Lathrop. Senator Howard, I have a question and it gets to one of the statements that just evolved from your conversation with Senator Coash. And there is no definition of social worker in LB402 and I know that there are certified social worker and they're easily identifiable. And in Section 5 there is a definition in terms of the training that is broad enough to include an HHS caseworker who may not be a certified social worker. My concern is about the breadth of the application of the change in the definition of assault and who could conceivably fall within the definition of social worker. Or how would you determine from organization to organization, from agency to agency whether someone is or is not a social worker? [LB402]

SENATOR HOWARD: Well, I think, you know, that's a timely question. It's not only a good question, it's a timely question, because right now with the privatization effort the titles of the people that are doing case management as I knew it are constantly in flux. I mean this is...it's almost a rotation of definitions of social worker. But what I will say to you is that we have Terry Werner, who's the president of the state Association of Social Workers, here and I think he can give a more concise answer as to what is the most current method of determining who this would apply to, who it would be considered to be. [LB402]

SENATOR COUNCIL: Okay, because that's... [LB402]

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SENATOR HOWARD: And it may be that we can interpret it as someone that's engaged in the practice of social work, but I would rather leave that to Terry because that is his area of expertise. [LB402]

SENATOR COUNCIL: Okay. Because I'm concerned about the breadth. And, unfortunately, a lot of times constitutionality of measures depends upon whether they're overbroad, and here I'm thinking of we have a lot of private, not-for-profit, social service agencies who do the exact same thing that an HHS caseworker may be or one of the staff members of one of the privatized companies in terms of the services they render to families in crisis. [LB402]

SENATOR HOWARD: Well,... [LB402]

SENATOR COUNCIL: Is it the intent that it extend that broadly to... [LB402]

SENATOR HOWARD: Well, and sadly I'd have to say the diminishing number of Health and Human Services workers within the department that are doing social work, have social work responsibilities, and there are also quasi individuals, such as family support workers and visitation specialists, and there's a number of people. I would say to that the safety training aspect of this could...would be valuable to anyone that was engaged in the practice of social work. There's no question about that. Anyone can find themselves in a position where you've got an angry person sitting on the other side of the table or right across from you and to be able...as a matter of fact, we had that happen down here when a person came looking for me after a Judiciary hearing and got Lavon Heidemann, Chair of Appropriations, instead. It can happen to anyone. It can happen to anyone, but these people, people engaged in the practice of social work, people who are social workers are putting themselves out. They're going out there. They're meeting it head-on. [LB402]

SENATOR COUNCIL: Okay. And that's what gives rise...that gives rise to my occasion because what I hear you saying is there's no question there's a classification of people, certified social workers, and they're identified because they're certified. But then there's a group of people who may not have any special training or education but they provide social work type services. [LB402]

SENATOR HOWARD: Yeah. [LB402]

SENATOR COUNCIL: And then there's a group of people who wouldn't...you wouldn't describe as social workers but they engage in the provision of services that are social worker type. I'll give you an example. A community resource officer of the public schools who goes out, for example, and checks on truants, and many times they find themselves in the same kinds of...you know, entering homes with families in crisis or unstable situations. And my concern is, in terms of prosecution of individuals on felony

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charges, that you have the opportunity for selective enforcement. And no disrespect to county attorneys, but you know if they want to charge someone with a felony in the case of assault in the third degree, if the person engaged in a profession that called for them to go in and council and consult with families that may expose them to dangerous situations, in one instance they are a social worker for purposes of assault in the third degree, but for other purposes we don't consider them social workers. I'm just trying to... [LB402]

SENATOR HOWARD: And I completely understand what you're saying, and truthfully enough, we have an amendment to address that. (Laugh) [LB402]

SENATOR COUNCIL: I could have...well, that could have solved about ten minutes of that. Thank you. (Laughter) [LB402]

SENATOR HOWARD: Well, we like to keep you in suspense for a while, so that will be coming in. [LB402]

SENATOR LATHROP: Okay. Very good. [LB402]

SENATOR HOWARD: Thank you. [LB402]

SENATOR LATHROP: Thank you. Terry. [LB402]

TERRY WERNER: (Exhibits 6, 7, 8) Good afternoon, Senator Lathrop and the rest of the Judiciary Committee. My name is Terry Werner, spelled T-e-r-r-y W-e-r-n-e-r. I'm the executive director, not the president, of the Nebraska Chapter of the National Association of Social Workers. I wish to thank the committee for allowing me to testify and I also wish to thank Senator Howard for bringing this bill forward. And hopefully I'll have an opportunity to answer some of your questions but not on my time. So there are three main parts to this bill. One is the assault charge and change in the assault charge to a felony. We think this is an important piece of the bill because we believe it provides a deterrent effect to agitated clients and that if in a situation where a social worker is faced with an agitated client it may be a resource that they can actually use by stating that it is a felony. Second part of this, it requires six hours of continuing education on safety. Currently under the licensure laws, people who are licensed are certified, are required to have 32 hours of continuing education within a two-year period. The six hours of safety would only be part of that 32 hours in a two-year period. Also it should be clear that we're hoping that this is a...it's clear in the legislation that this is a one-time career requirement. I'll also point out that your own recommendations from the Capitol Security recommendations suggests safety training for senators and legislators, so I'm glad that they recognize the importance of this. And then finally the third part of this bill requires that persons employed by DHHS or contracted who provide direct social services or casework be required to have the six hours of training. We think this is very

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important for two reasons. One reason is that through legislation you as legislators are able to hold accountable the department and make certain that these important safety trainings are taking place, and secondly the hiring requirements for HHS for people working with...in child protective services, people working with families in crisis, people working with our most vulnerable citizens is only to have a college degree. They're not required to have a professional degree in human services or social work or marriage and family therapy, so they could in fact be an English major or a history major and so on. So the requirements in the hiring process I think are too lax and I think that they should have this training and it's mandatory. I will also point out, and Senator Howard briefly touched on this, about the fiscal note. I spoke with Director Reckling the other day and I asked him about this, and currently they already do some safety training. Whether it's the kind of training that I think should be there is another question, but they do do some safety training. And therefore, I would argue that they're already spending the dollars and there's no additional fiscal note. And my time is running out so I'm going to quickly jump ahead. I would also...I would respectfully ask that there be a committee amendment to this bill and I would...here are some of the things I would like to see included. Back when we were licensed in the profession in the '90s, Nebraska did not separate out social workers from other professions. Can I continue just briefly? [LB402]

SENATOR LATHROP: If you can wrap it up in just a few seconds. [LB402]

TERRY WERNER: It will be really fast. It will be really fast. We were all thrown in the same boat, so under the licensing law you can be a marriage and family therapist, you can be a social worker and so on, but you'd be licensed as a licensed mental health professional. And so I am going to ask that the amendment include an expansion to include all persons licensed or certified under the Mental Health Practice Act. I also think it's important, I mentioned to add the accountability and oversight for DHHS. Also in the bill it says that they should meet the requirement within 30 days of hiring. In talking to Director Reckling, I think that may not be reasonable and perhaps 6 or 12 months would be more reasonable. I would also request that the implementation date, instead of January 1, 2012, be October 1, 2012, because that would coincide with a full two-year renewal cycle. And then I would like to see that it be more clear that this is a one-time requirement, and so all of those things. I gave out several handouts and I would suggest one of the things that might be of interest, there are some snippets of testimonial from Nebraska social workers about the things they face on a daily basis, so... [LB402]

SENATOR LATHROP: Very good. Thanks, Terry. [LB402]

TERRY WERNER: Thank you. [LB402]

SENATOR LATHROP: Are there any questions? I see none. Okay. Thanks for your testimony. [LB402]

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TERRY WERNER: Sure. [LB402]

SENATOR LATHROP: How many people are here to testify on this bill? Looks like we got two more. [LB402]

SENATOR HARR: No, we have one in the back corner too. [LB402]

SENATOR LATHROP: Yeah, I saw them. Two? Oh, there's four? Okay. Welcome. [LB402]

MARY BAHNEY: (Exhibit 9) Okay. Senator Lathrop and other members of the Judiciary Committee, my name is Mary Bahney, B-a-h-n-e-y, and I'm a licensed clinical social worker in the state of Nebraska and I'm here today in support of LB402. LB402 would ensure that all certified social workers and, if amended, licensed mental health practitioners, which include social workers, professional counselors, and marriage and family therapists, Department of Health and Human Services employees, and those contracted to work for DHHS, would receive training related to the specific safety needs required in these positions. Social workers and others working in the human service field have interactions with individuals who are having the best days of their lives and the worst days of their lives. Persons working in this field are drawn to helping people whose lives may not be going so well. As professionals in the field it is often readily apparent when a person, either being met for the first time or in the course of numerous meetings, is becoming upset, angry, and potentially violent. LB402 would give these professionals the tools needed to appropriately respond to and de-escalate these potentially volatile situations. This training could include the teaching of skills such as risk assessment, safety planning, de-escalation techniques, and nonviolent defense. Incidents that can potentially escalate to violence can be experienced in institutional, agency, private practice, or in-home settings. Because of the importance of confidentiality in this work, it's not unusual for there to be few if any other persons in the immediate vicinity of meeting with clients. Therefore, it's all the more important that mental health and other human service professionals be trained in the specific skills that will help ensure the safety of everyone involved. In my career as a school social worker, I've met with persons who have become upset in the course of our interaction. Fortunately, I've never experienced any direct harm, but I've seen firsthand the potential for the situation to get out of hand rapidly. The skills I would have learned in the safety training would have been most helpful in a variety of situations. I could have benefited from this training at any point in my career, but I know that it would have been most helpful when I was a brand new Caseworker II with the then Douglas County social services. In all careers, we learn many aspects of the job as we become more comfortable and more mature in the role required, which was my experience. Gaining this information through training rather than through trial and error would have been most helpful. We all know the unpredictability of human behavior, especially if a mental

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illness, substance abuse, and profound stress compound the situation. Ensuring that professionals who are often likely to encounter those, who are experiencing these extremes in human behavior, have basic safety knowledge may not prevent all incidents from happening, but I believe that it can go a long way in reducing the severity of these incidents. [LB402]

SENATOR LATHROP: Very good. Thanks, Mary. Any questions? I don't see any. Thanks for coming down. [LB402]

MARY BAHNEY: Thanks a lot. [LB402]

ANNE BUETTNER: (Exhibit 11) Good afternoon. I am Anne Buettner, last name B-u-e-t-t-n-e-r. I represent the Nebraska Association for Marriage and Family Therapy. We support the proposed amendment of this LB402 and we thank the social workers and also Senator Howard for introducing the bill. Now with the amended version, the bill would be inclusive of licensed mental health practitioners--and there are 2,526 of us, okay?--including all the social workers at the master level. Now of course it is important to preface that not all mentally ill are dangerous or potentially dangerous, and of course it is impossible to stop every unhinged person from committing assault crimes. But in the wake of the crimes on Congresswoman Gabrielle Giffords at Arizona and also Seung Hui Cho at Virginia Tech where 33 people were killed, more attention is paid to the mentally ill and dangerous. And I would like to give you some data here. This is Dr. Jeffrey Swanson from Duke University, psychiatry professor, his data shows that lifetime prevalence of violence of those who are with schizophrenia or mood disorders is about 33 percent as compared with 15 percent of those who do not have these major disorders. Now if you combine schizophrenia or mood disorder with substance abuse, then this prevalence of violence data indicator, our data soar up to 65 percent. So what does that mean? That means that psychotics and addicts, they have a higher, what we call a higher arousal level. They get agitated very easily. A reliable set of predictors of violent crimes are age, gender, lower socioeconomic status, and also history of arrest. With the history of arrest, then when we have this raised penalty proposal, this can act as a deterrent. Now you would say that what does it matter to a person who has impaired perception of reality? But bear in mind, just those two national attention massacres that I mentioned, before the major crisis occurred there's always a long period where the person, you know, showed disturbing signs and also exhibited disruptive behaviors, and these gradually escalate. And that's the time that you know the law can intervene. Nowadays many times psychotherapy are conducted at home where the family system can be... [LB402]

SENATOR LATHROP: Anne. Anne, we're going to have you wrap up. [LB402]

ANNE BUETTNER: Okay. [LB402]

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SENATOR LATHROP: We have that light system and if we don't enforce that... [LB402]

ANNE BUETTNER: Yeah. [LB402]

SENATOR LATHROP: ...then this committee will be here till 9:00 tonight. [LB402]

ANNE BUETTNER: Okay. I have some data here on the second page of that from central Nebraska, where I come from, from Grand Island, the community mental health center that I interviewed, and they were telling me that just...even as I interview them, they have two people who are already on workmen's comp because of injury resulting from physical aggression... [LB402]

SENATOR LATHROP: Okay. [LB402]

ANNE BUETTNER: ...and then and so on. So this bill has a balance, the preparedness of the training as well as the protection of the raised penalty, and we hope that you would advance it. [LB402]

SENATOR LATHROP: Very good. Thanks, Anne. Are there any questions? I do not see any. Thank you for your testimony. [LB402]

ANNE BUETTNER: Okay. Thank you. [LB402]

SENATOR LATHROP: Any other proponents? Julie, we have your letter too. You're still welcome to testify. [LB402]

JULIE DAKE ABEL: On LB402? [LB402]

SENATOR LATHROP: Yes. Isn't it on LB402? [LB402]

JULIE DAKE ABEL: No. [LB402]

SENATOR LATHROP: Oh, okay. [LB402]

JULIE DAKE ABEL: The one that I had submitted was on... [LB402]

SENATOR LATHROP: All right. Well, come on down. [LB402]

JULIE DAKE ABEL: I think that was on LB242. [LB402]

SENATOR LATHROP: It's there now at the bottom of my pile because I got them early. [LB402]

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JULIE DAKE ABEL: I apologize for the confusion. [LB402]

SENATOR LATHROP: That's okay. [LB402]

JULIE DAKE ABEL: (Exhibit 12) Dear members of the Judiciary Committee, my name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l. As I previously said, I'm the executive director of the Nebraska Association of Public Employees. We are in support of LB402 that would change penalties relating to third-degree assault on a social worker and for the social worker safety training that would be allowed in this bill. While I have not seen the amendment, from what I have heard about possible changes to this bill, I do believe would be positive. I heard some of Senator Council's questions and concerns with some of the state employees that we represent. You know, we do have people that work in child and family services, formerly CPS workers. We do actually have people that are called social service workers, but those are actually the people that determine eligibility for food stamps and Medicaid. So I do believe that it can get very confusing, you know, as well as we actually have, you know, master social workers and we also have people that are in other related fields that could be considered in the social work field. So we do believe that it is a step in the right direction. From a safety standpoint, we have had a lot of safety concerns come from workers that are out there, especially if they're out doing visits to the home and such, as Senator Howard said with going in there, having to tell the families that they've had possible abuse or neglect allegations. So we believe that it would just promote a more prepared and well-trained worker. And with that I will close because I know there's many other bills up today. [LB402]

SENATOR LATHROP: Very good. Thanks, Julie. Any questions? I see none. Thank you. [LB402]

JULIE DAKE ABEL: Okay. Thank you. [LB402]

SENATOR LATHROP: And any other proponents? (See also Exhibit 10) Any opponents? Our friends from the NAS. [LB402]

BRAD MEURRENS: Yes. [LB402]

SENATOR LATHROP: Welcome. [LB402]

BRAD MEURRENS: (Exhibit 13) Welcome. Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska Advocacy Services, the Center for Disability Rights, Law and Advocacy. We are opposed to LB402 as currently written. Let me be clear: We do not deny or intend to trivialize the injuries that do happen to social workers. While the intent of the bill is laudable, making assault a felony is misguided. While extending heightened

status to social workers might boost morale, empowerment and control over an environment in which social workers perceive is out of control, these are strong indicators of systemic and/or facility failures which should be explored, not problems inherent in people, especially those with severe emotional or mental conditions. The inherent flaw in this legislation is that the bill relies fundamentally on the deterrent effect; that is, people will not engage in assaultive behavior if they know that there is a significant punishment, in this case a felony. However, Nebraska already criminalizes assault. The question that LB402 raises is, why have not the current assault statutes prevented assaults from occurring? We are not convinced at all that this felony charge deterrence will enhance prevention. It is highly unlikely that assaultive individuals will stop to think before they would assault. If the deterrent effect actually worked, Nebraska's death row and state penitentiary would be empty. LB402 raises another question. If these assaults are not prosecuted, then why? The Legislature, in order to make the best law possible, needs to address the root causes of the assaults. The solution to the social worker assault problem is not simply to ramp up penalties but requires a much more robust investigation as to the root causes of the assaults. If assaults occur even after LB402 passes, does that mean that we should be expecting legislation in the future to further increase penalties for assaulting social workers? Where does that stop? The approach this legislation takes provides a clear punishment slippery slope. That concludes my testimony. I'd be happy to answer any questions that you may have. [LB402]

SENATOR LATHROP: Brad, that might just be a good summary of what we consider every time we look at a penalty in this body, from the death penalty on to Class IV misdemeanors. [LB402]

BRAD MEURRENS: Oh. [LB402]

SENATOR LATHROP: But thank you for your testimony. [LB402]

BRAD MEURRENS: Thank you. [LB402]

SENATOR LATHROP: Are there any questions for Brad? I see none. [LB402]

BRAD MEURRENS: And that might be my shortest testimony in this hearing too. [LB402]

SENATOR LATHROP: And we appreciate that as well, especially on a Friday. Thanks, Brad. Anyone else here in opposition? Anyone here in a neutral capacity? Let's see, who opened this? Senator Howard. [LB402]

SENATOR MCGILL: She waived. [LB402]

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SENATOR LATHROP: And she waived. So that will close our hearing on LB402 and bring us to Senator Krist and LB284. Welcome, Senator Krist, to the Judiciary Committee. [LB402]

SENATOR KRIST: I feel like I have arrived. Some people have to wait a long time to get in to see this committee. (Laughter) They're both not looking, they don't care. [LB284]

SENATOR LATHROP: It's like a doctor's office. (Laugh.) [LB284]

SENATOR KRIST: (Exhibit 14) Good afternoon, Senator Lathrop and members of the Judiciary Committee. For the record, my name is Bob Krist, K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha. I appear before you today proud to introduce and support LB284. It is a bill introducing on behalf of a constituent of mine, Mr. Robert Swanson, who is a member of the American Legion Post 1 in Omaha. Mr. Swanson worked with my predecessor, the very quiet and shy Senator Mike Friend, in 2006, in presentation to enact laws to prohibit picketing within 300 feet of a funeral or a memorial service. Mr. Swanson approached me this summer and asked me to consider increasing the distance or proposing an increase in the distance requirements to 500 feet. There were many other proposals and this is the one that we decided to go forward with. I'm specifically referring to the Nebraska Statute Section 28, Funeral Protest. Before explaining my rationale for introducing LB284, I want to draw your attention to the amicus or friend of the court brief filed to the U.S. Supreme Court by the state of Kansas--it was part of your handout in your package--47 other states, and the District of Columbia, in support of the father of the fallen Marine, Mr. Albert Snyder of York, Pennsylvania, who sued the leader of the Westboro Baptist Church in Topeka who protested at his son's funeral. Mr. Snyder won an \$11 million jury verdict against Pastor Phelps and his church for intentional infliction of emotional distress. But a federal appeals court overturned the verdict on First Amendment grounds. Last fall, the U.S. Supreme Court heard arguments in the case. This brief, cosigned by our own Attorney General Jon Bruning, eloquently articulates why states have a compelling interest in protecting the sanctity and the privacy of funerals both to honor the deceased citizens and to support and comfort grieving families. I ask that this brief and the associated New York Times, dated October 6, 2010, article be entered as part of the record for this hearing. It is a great brief and I encourage you to look at it in your deliberation. Based on research provided by the Legislative Research Division, courtesy of the National Conference of State Legislatures, you will see a handout...I'm sorry, that is my copy of what you handed out already. (Laughter) Thank you very much. Best laid plans of mice and men. Based on research provided by Legislative Research Division courtesy of the National Conference of State Legislatures, you will see in my handout that my office prepared which shows that 20 other states have enacted distance requirements of 500 feet or more for those who picket at funerals. Of those 20 states, five of them--Maine, Mississippi, South Carolina, South Dakota, and Texas--have 1,000-foot distance requirements. Montana, the Big Sky Country, has a 1,500-foot restriction. Based on the

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terrain and some of the state's rural areas, I would support the committee considering a distance greater than 500 feet. But I felt 500 was a benchmark to achieve with this legislation. Striking the appropriate balance between the privacy rights of grieving families and the freedom of speech or First Amendment rights of others to...it's a delicate undertaking, there is no doubt. My primary concern in trying to make a good law better is to have enforceable legislation which meets constitutional muster in the event of a court challenge. In various First Amendment cases the Supreme Court has ruled that time, place, and manner can be regulated. What cannot be regulated is content. LB284 meets those tests. It should be noted, courts have upheld distance requirements states place on those attempting to campaign within a certain distance of a polling place, for example. Funerals and memorial services, much like polling places, could be viewed as having participants who are captive audiences. I believe there is a compelling state interest in protecting family privacy to prevent emotional distress at funerals and memorial services. In 2004, the United States Supreme Court recognized the strong privacy interest of family members. Justice Anthony Kennedy, in National Archives and Records Administration v. Favish wrote, and I quote, "Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites, r-i-t-e-s, and respect they seek to accord to the deceased person who was once their own." In closing, I want to thank those who have contacted my office expressing their support for this legislation. The positive response I have received for LB284 has been overwhelming, and perhaps your offices have been contacted on this bill as well. I believe this feedback and indicative of the strong support, respect, and admiration that our citizens have for those who serve our country and have given the ultimate sacrifice. They, their family members, and loved ones are the ones I introduced this bill for. I want to thank you. I want to thank the committee for its consideration and support of LB284. And with that, I would be happy to answer any of your questions. [LB284]

SENATOR ASHFORD: Any questions of Senator Krist? Senator Larson. [LB284]

SENATOR LARSON: First of all, I would like to thank Senator Krist for bringing this bill. And, I guess, you kind of alluded to it in your opening: 500 feet was to try to strike a balance between First Amendment rights and family rights? Is that how you came up with 500 feet or... [LB284]

SENATOR KRIST: Thank you for the question, Senator Larson. I believe that in looking at cemeteries around the area, when we truly respect the rights and privilege of those families and those that grieve, 500 feet may be more appropriate for our topography, our terrain, our geography. I think it's a good step in the right direction to enforce that distance. [LB284]

SENATOR LARSON: But you wouldn't be opposed to 1,000 or... [LB284]

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SENATOR KRIST: Oh, absolutely. I think it would be a great statement to go further than that. But I would balance that, particularly in today's economic times with the potential of a lawsuit, that could balance. But that inherently was my rationale for the 500 foot. [LB284]

SENATOR LARSON: And why--I'm sorry if I'm stealing Senator Coash's question. Why did you not change possibly the penalty for picketing from a Class III to something more serious? [LB284]

SENATOR KRIST: I think when I looked at the briefs and the Supreme Court decisions, as well as the write-ups by the Justices, there were contentious issues when it came to the increase in penalty. So I wanted to stay away from...I wanted to be as simple and unobtrusive as possible yet make the point. [LB284]

SENATOR LARSON: Thank you. [LB284]

SENATOR KRIST: And thank you for your question. [LB284]

SENATOR ASHFORD: Thank you, Senator Krist. Are you going to stick around or are you... [LB284]

SENATOR KRIST: Yes, sir, I'd love to. [LB284]

SENATOR ASHFORD: Thank you. How many testifiers do we have on this bill? Let's go to the proponents first. [LB284]

BOB SWANSON: (Exhibit 27) Thank you, Mr. Chairman, members of the committee. My name is Bob Swanson, S-w-a-n-s-o-n. I did write a letter of support and felt it would be appropriate to appear here to verbalize my personal support for the law, LB284. Senator Krist has given a good explanation of how we got to where we're at. In answer to your question on how we arrived at 500 feet: 500 feet is more than 300 feet. (Laughter) If you would suggest 1,000 feet, I'd be here again, or two miles for that matter. But the bottom line is the more protection, if you will, we can provide for the families of those who are going through what has to be just the most horrific time in their life, I think we have an obligation to do it. I don't know what else I can say other than what I've put in my letter. If you have any questions, I'd be happy to try to answer them. Otherwise, we'll move it on. I thank Senator Krist for sponsoring the bill. I thank you people for your service to our state. Any questions, I'll be... [LB284]

SENATOR ASHFORD: Thanks, Bob, thanks for your service. And we will find the letter. I don't know... [LB284]

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BOB SWANSON: It was a good letter. You want to find that letter. (Laughter) [LB284]

SENATOR ASHFORD: We're going to find it. I am sure that it's a great letter and we are going to find that letter and we're going to get it distributed. So thanks, Bob, very much. [LB284]

BOB SWANSON: Good. Thank you. [LB284]

AMY PRENDA: (Exhibit 15) Senator Ashford and members of the Judiciary Committee, my name is Amy Prenda, it's A-m-y P-r-e-n-d-a. Sheriff Dunning from Douglas County was going to be here to testify in support of this bill, but he at the last minute was unable to attend. I'm handing the letter out. In sum, what the sheriffs feel is that the increased buffer will provide an additional public protection issue not only for the picketers but also for those attending the funeral. And I would be happy to answer any questions you might have. [LB284]

SENATOR ASHFORD: Any questions of Amy? Seeing none, thank you, Amy. Other proponents. Opponents. [LB284]

AMY MILLER: (Exhibit 16) Good afternoon. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm legal director for ACLU Nebraska and I have to represent people that I really, really hate, including people who picket funerals. I've represented Nazis, I've represented white supremacists, I've represented the Westboro Baptist Church, and the only reason I do so is because I love the First Amendment even while I hate the speech of these people. Senator Krist is correct that the time, place, and manner restrictions are allowed but only if there is a balance. And the U.S. Supreme Court has said this repeatedly in other contexts, including the context of pro-life protestors who wish to express their opinions outside of an abortion clinic. The protestors still have a right to have their message heard. The people who are attempting to access reproductive services or those who are attempting to attend a funeral have a right to do so without interruption. Three hundred feet probably is reasonable. I've cited, at the very bottom the first page, that that's actually still in question. The Eighth Circuit, which is the federal district we're in, has had two trial courts strike down the 300-foot limit in two other cities, and those are making their way up to the Eighth Circuit Court of Appeals. So we'll shortly find out whether or not 300 feet is okay or not. It is imprudent to extend the state law to 500 feet while we're still in question. And I'll point out to you that Congress, when they limited funeral picketing, has only gone as far as 300 feet. The Respect for America's Fallen Heroes Act found that 300 feet was a good balancing act. We know that those who picket at funerals are litigious. We know that they are all carrying bar licenses and will bring suit. We believe that it's appropriate for Nebraska to hang back and wait before we extend it to 500 feet or 1,000 feet, to wait and allow other districts and other communities to have to pay the legal fees that come with these issues. But finally, I would point out that if the Legislature is going to move up to 500 feet you need

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specific evidence and a specific legislative record showing why 300 feet has not been adequate. You need some actual evidence or proof that the 200 feet being added on to bar funeral picketing by 200 additional fee that there is a compelling state interest to push people farther back. Without that sort of compelling state interest, your state statute will not trump the First Amendment rights of people who want to protest in this manner. So I would suggest that generalized opposition to this abhorrent behavior, which is protected by the First Amendment, is going to need a better record than what has been presented today if you want to move forward. [LB284]

SENATOR ASHFORD: Thanks, Amy. Appreciate your testimony. Any other opponents? Any neutral testifiers? Senator Krist, do you wish to close? [LB284]

SENATOR KRIST: You missed what I said when I first came in. I appreciate coming to Judiciary. I feel like I've finally arrived in the Legislature, being able to come in. (Laughter) [LB284]

SENATOR ASHFORD: Well, that's true. [LB284]

SENATOR KRIST: (Laughter) That's true. I spent...in all seriousness, my only closing is I spent 21 years defending the right for everyone to say what they wanted to say. And I believe in the First Amendment. I also believe that when you look at the state's topography, geography, and compelling need, it is that we cannot and should not disturb the sacred ceremony of burial, and that's what this is about. And Nebraska has the kind of topography, geography that would warrant a compelling reason, I believe, to change it to 500 feet. So with that, I thank you for the opportunity to come before you today. [LB284]

SENATOR ASHFORD: Thank you. I'm sure we don't thank you enough for your 21 years of service either. We take it for granted. [LB284]

SENATOR KRIST: Thank you me every day today, I love it. [LB284]

SENATOR ASHFORD: Okay, thank you. That's seriously stated, by the way. [LB284]

SENATOR KRIST: I understand. [LB284]

SENATOR ASHFORD: Senator Lathrop has LB677. [LB677]

SENATOR LATHROP: (Exhibit 17) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, and I'm here to introduce LB677. You will hear, after me, stories and accounts of why we believe LB677 is important. It is a bill which attempts to address the issue of assaults upon healthcare workers. And I see Tammy Field is here and I know Tammy. And there's people from

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Alegent and folks from Creighton who can tell you about how this is becoming an increasing problem. And what I want to talk about in my opening is the approach I've taken because we...and it's appropriate that this is set today. We've heard people that say: I want my industry, my profession, my circumstance carved out for special treatment. And typically the approach is to go to the next level of penalty. And what I've tried to do in this case, and for no other reason than to generate some discussion about the appropriateness of my approach, is to make a mandatory jail sentence for people who assault healthcare workers. And we've also required in the bill that there be a sign put up. And my thought is that if you walk into Creighton Hospital or into Midlands Hospital for care or treatment, that you're going to walk right by a sign that says: If you assault one of the workers here that are providing care you're going to get jail time. I think it's a good discussion to have because the approach typically is to raise the level of offense, and this is maybe a different approach. I'm open to either approach but I do think the time has come to address the significant concerns of those in the healthcare field who have been assaulted by patients, by people who come to see the patients that are angry with the care, or just angry anyway. We used licensed care professionals and apparently that was too broad. We brought in pharmacists and we brought in people that work in nursing homes, and that really probably is broader than we meant to get. Those who work in clinics and those who work in the hospitals are really who we're after so. [LB677]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any questions of Senator Lathrop? Senator Council. [LB677]

SENATOR COUNCIL: Thank you, Chairman Ashford. Senator Lathrop, as perhaps you could tell from the questions I asked about social workers--and to be very candid, I do not disagree with the concern surrounding assaults on healthcare providers, particularly in hospitals. And, in fact, Senator Ashford and I are involved in an effort to provide some support for particularly emergency room workers to prevent such occurrences. But my problem is, where do we stop? You know,... [LB677]

SENATOR LATHROP: Well, it's funny you'd say that because I wrote that on one of the bills before mine,... [LB677]

SENATOR COUNCIL: And that's what I'm saying (laugh). [LB677]

SENATOR LATHROP: ...and I think it's somewhere before this one (laughter), because this one has merit. You know what? You're exactly right. And I suppose that the question ultimately is, what is it about their circumstance that makes them unique? And here's my answer to that. (Laugh) I just got done with a case, and Tammy will testify a little bit about what happened to this nurse at Midlands Hospital. But it happens to emergency room physicians and the nurses and the doctors that care. They rush into the room to go provide care to somebody in an emergent situation, and they charge in

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there and then somebody pulls a knife, somebody breaks out their fists and starts beating them. And they are as vulnerable as anybody can be. Why these people and not social workers? I just think it's the circumstances that you'll hear from the proponents who follow me. [LB677]

SENATOR COUNCIL: I mean, I'm going to say, why not me? [LB677]

SENATOR LATHROP: Well, and that's why...frankly, that's why I didn't increase it to the next level and take a Class IV misdemeanor...or Class I misdemeanor and make it a Class IV felony, and instead thought maybe the answer is just to say you're going to get jail time, and then put a sign up so people know it. And hopefully, it is a better deterrent than simply jacking up the level of offense. [LB677]

SENATOR ASHFORD: Yes, Senator Coash. [LB677]

SENATOR COASH: Thank you, Chair. Senator Lathrop, with the other bill I asked about schools and there are nurses in some of the larger schools here, you have a school nurse. Have you thought about how...and, you know, kids will be assaultive in schools. And have you thought about how this law might apply to children who might assault a nurse in their school? [LB677]

SENATOR LATHROP: I think that the bill would require an amendment to refine who the target is, the target of our protection. My intent was to primarily for a hospital setting was what I was looking at. Then somebody said we caught the pharmacists in the definition of healthcare provider. I probably wouldn't do pharmacists. But the...I suppose the thing about schools is there should be, and this maybe isn't very true given what happened at Millard South, but there should be something that filters these people out before they ever get to the nurse at the high school, and that's not true at the hospital. The hospitals have to take folks that come through the emergency room. And another thing that's happening, and I think this is probably particularly unique maybe to the Med Center and to Creighton, which is they bring in somebody in a gang, then the gang follows those people to the emergency room. And then out in the waiting room we now have a bunch of anxious and upset gang members, and somebody is going to get hurt. And that's sort of the intent of the bill. [LB677]

SENATOR ASHFORD: Really couldn't be more timely, I mean. And we've talked a lot on this committee about the CeaseFire programs across the country and getting hospital intervention. And Brenda is right, we are going to announce our hospital intervention program that we've been working on for a year now, next week, just exactly right on point, and... [LB677]

SENATOR LATHROP: Well, and that's exactly right. We saw a shooting down at Creighton... [LB677]

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SENATOR ASHFORD: Right. [LB677]

SENATOR LATHROP: ...in the last six months. So it is...a hospital is... [LB677]

SENATOR ASHFORD: It's a real... [LB677]

SENATOR LATHROP: A lot of anxious people show up there, Senator Coash. [LB677]

SENATOR ASHFORD: Right. [LB677]

SENATOR LATHROP: And some of them are patients and some of them are family members of patients. And I think the signs...it's kind of a different twist. [LB677]

SENATOR ASHFORD: The sign is actually a good thing and providing information. [LB677]

SENATOR LATHROP: But it's something that people see, and they go, wait a minute, they mean to be serious about assaults in this state on healthcare workers so. [LB677]

SENATOR ASHFORD: Thanks for bringing this. [LB677]

SENATOR LATHROP: Certainly. [LB677]

SENATOR ASHFORD: Gary Honts came up to me earlier and said he had to leave. So I'm going to have him come up first and then... [LB677]

SENATOR MCGILL: Maybe the same sign with a no handgun symbol on it. [LB677]

SENATOR ASHFORD: Yeah, no handguns would be nice too. But I think you've already got one of those signs don't you, Gary? [LB677]

GARY HONTS: (Exhibit 18) Yes, yes. Well, thank you. Gary Honts, president and CEO of Creighton University Medical Center, also representing Nebraska Hospital Association and Nebraska Medical Association in support of LB677. Want to share with you just a few comments here. I've been a healthcare executive for over 30 years and have seen the individuals who go into healthcare really dedicate their life to caring and reaching out for others. And that's what their purpose in life is. A short story is: Had an RN, who was about 120 pounds, staffing the emergency room, and a gentleman, over 200 pounds came in, very anxious. And the nurse's natural response is to reach out to take care of this individual, that's what they're trained, that's their compassion, that's what they do. And for about 45 seconds, before anybody could intervene, this individual just went off on the young nurse and caused harm to a point where she was out of work

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for over six months. It changed her life. And just...really just intervened not only just for her but for those individuals around them. As we have a shortage of skilled, qualified professionals in healthcare, to have this type of activity going on which is a deterrent of some sort for individuals to want to work in the first frontline of treating individuals in trauma settings, emergency room settings, a very confrontational type of environment or potential confrontation, it just begs the question of, how can we help them? How can we protect them? And as a deterrent, deterrents work. I've also, prior to healthcare, had experience in law enforcement and have seen firsthand where deterrents work. And also without the deterrents, individuals come in there, the healthcare providers they're there to provide healthcare and they really don't put up a defense. So as people are anxious, they take this out on individuals that are providing care for them. So again, I'd like to say that...very supportive of LB677. We want to thank Senator Lathrop for introducing LB677. And I also have a letter from the Nebraska Medical Association that we'd like to submit, and I think that's been provided already. And I'd be happy to answer any questions. [LB677]

SENATOR ASHFORD: Any questions of Gary? Thank you, sir. [LB677]

GARY HONTS: Thank you. [LB677]

SENATOR ASHFORD: How many testifiers do we have on LB677? Okay, great. Next proponent. [LB677]

TAMARA FIELD: (Exhibit 19) Thank you, Chairman Ashford. Members of the Judiciary Committee, good afternoon. Thank you for allowing me to testify as a proponent of LB677. Today, in the United States, 1,300 healthcare staff will be assaulted by a patient. This is from the National Institute for Occupational Health and Safety. My name is Tamara Field, F-i-e-l-d. I've been a registered nurse since 1984. Primarily, I've worked in the areas of critical care, intensive care, emergency department, supervisory and managerial roles. Currently, I am operations director for Alegent Health Midlands Hospital Inpatient Care. I have approximately 80 direct reports, mostly including nurses, nurses aides, clerical and cardiac staff in our medical surgical and intensive care units. With ten hospitals and 44 clinics, a combined total of over 600,000 patient visits a year, Alegent Health is the largest nonprofit healthcare system in Nebraska. Moreover, we are one of the largest private employers in the state with 9,000 employees and 1,200 physicians. I would also like to thank Senator Lathrop for his support and for introducing this bill which would provide heightened criminal penalties for assault on a healthcare provider. When I first became a nurse I never worried about my safety, and I certainly never worried about my safety when it came to my patients and their families. That all changed for me in 2007, July of 2007, as one of my staff charge nurses was assaulted by a patient, a patient who was placed in our post intensive care unit while awaiting bed placement at a psychiatric facility. My nurse knocked on his door, then entered the room after hearing some commotion as she was walking down the hall. The 18-year-old

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patient came directly out of bed at her, hit her with a closed fist in the face. Then when she hit the floor he continued to hit her side-to-side on her head. The assault lasted approximately 30 seconds but was forceful enough to inflict a severe concussion, serious harm to her left eye. As a result, her sight is permanently damaged. She has double vision, daily headaches, and is nauseous most of the time. Aside from the debilitating physical injury that she sustained, she's never been able to care for patients in the same way again. Every day I would watch her scour their records for any hint of violence, any psychiatric history. She became guarded, cautious in her approach. Instead of being the one that would always run into a situation where she was needed, she'd stand outside and make sure it was safe. I submit to you that the last thing you want your nurse doing when you're needing her lifesaving care is standing outside the door deciding whether or not it's safe enough. Some of the very laws that are in place to protect our rights make us more vulnerable. EMTALA laws tell us that we can't turn away a patient. Even if we don't offer that service at our hospital, we must hold them, clear them, stabilize them until they're able to go somewhere else. We want our healthcare facilities to be nurturing environments where we can safely care for our patients and their families. I believe that punishment for assault on healthcare workers must carry a penalty that is equal to the crime. If these were your loved ones, you would expect nothing less. I thank you for your support of LB677. [LB677]

SENATOR ASHFORD: Thanks, Tamara. Any questions of Tamara? We have your statement, so thanks for all your service... [LB677]

TAMARA FIELD: Thank you very much. [LB677]

SENATOR ASHFORD: ...for all those years. Yes, sir. [LB677]

SHANNON ENGLER: (Exhibit 20) Good afternoon, Senator Ashford, committee. My name is Shannon Engler, S-h-a-n-n-o-n E-n-g-l-e-r. I'm testifying on behalf of BryanLGH Medical Center to support passage of LB677. I'm a registered nurse and director of the mental health services at BryanLGH. Like my colleagues and the staff that work for me, I've dedicated my life to use art and science to help people be healthy, to help them live and enjoy their lives, to help our communities and state to be strong. Now there are an increasing number of times where meanspirited people are coming into our medical centers for care and intentionally bullying, assaulting, and battering our employees. This is neither what my colleagues nor I envisioned nor wanted to be part of our life's work. Some examples of recent attacks of healthcare professionals at BryanLGH include an angry young patient who came to us with broken legs, had rods placed in surgery, and needed to be on bed rest on the orthopedic unit. As he was intentionally trying to get up out of bed, and a nursing tech intervened, he began kicking her. She was pregnant. As the nurse manager intervened to try to stop that attack, he threw her against a wall and broke her jaw. She had to have surgery as a result. That patient knew what he was doing. A patient on our neurosciences unit was known to staff to be meanspirited. While

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a nurse was attending to her duties, he got between her and the doorway and attacked her. She crashed into the wall and injured her shoulder. Fortunately, the room door was open and other staff immediately came to assist or this could have been a much worse situation. The patient not only knew what he was doing, he had waited for the opportunity. After the attack, the nurse was scared, the whole staff was scared. The incidents in the emergency department of threats, grabbing, slapping, punching are so significant that when we built our new emergency department we built space for a police department substation. We've also hired a private firm to provide off-duty law enforcement officers for extra security in our emergency and mental health departments. These officers are in addition to our traditional security officers provided by another private company. All of these patients knew what they were doing--this is an important distinction to make. We believe this legislation will become a significant deterrent to those people who currently attack our healthcare workers in a willful, cavalier, and many times premeditated manner. BryanLGH supports passage of LB677. Please help to stop the violence toward healthcare workers, those who have dedicated their lives to practice art and science to help others. Thank you. [LB677]

SENATOR ASHFORD: Thanks, Shannon. Any questions of Shannon? Yes, Senator McGill. [LB677]

SENATOR MCGILL: I just have a general one. I mean, are there cases of people just being...like, who are violent, who are just really scared? They're coming in with an injury and, you know, their adrenaline is going crazy and are just scared, and it leads them to maybe unintentionally or...do you see where I'm going? [LB677]

SHANNON ENGLER: Yes. [LB677]

SENATOR MCGILL: Maybe I watch too much TV, too, (laughter) so many ER shows. [LB677]

SHANNON ENGLER: No, actually that's a great observation--and yes, there are. Unfortunately, in my medical center, like I believe all medical centers, we actually train our staff and we call it directed intervention--other people, crisis prevention--different techniques to identify the stressors that people are under and the behaviors that they exhibit as a result. And certainly I'm not suggesting that someone that doesn't know what they're doing or acting out of a reflex or instinct that this would apply to them. But I believe Senator Lathrop mentioned earlier we have gang members coming in, family disputes, people that are just meanspirited--that's the phrase I'm going to use. That's who we think that this bill and law needs to be directed towards. [LB677]

SENATOR MCGILL: Thanks. [LB677]

SHANNON ENGLER: You bet. [LB677]

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SENATOR ASHFORD: Thank you, Shannon. [LB677]

SHANNON ENGLER: Thank you. [LB677]

SENATOR ASHFORD: Any other testifiers? [LB677]

KAREN WILEY: (Exhibit 21) My name is Karen Wiley and I'm a registered nurse who resides in Omaha District 31. I'm here today representing not only myself but Nebraska Nurses Association and Nebraska Chapter...Nebraska State Council of Emergency Nurses Association. We represent 30,000 nurses in Nebraska, and we ask that you support LB677. Nurses have become the battering ram (laugh), been the result of being beat in the emergency departments as well as in the healthcare settings. Oftentimes violence strikes out unexpectedly, it's explosive. You can be standing asking basic questions to a patient, and they explode in violent behavior. Fortunately, I've been a nurse for 18 years, I have not...I've been fortunate enough not to have been assaulted but have come close where people become angry and, like I said, explosive to where they can strike out at any moment. Our hospitals are a place to receive treatment for illness and injuries. And nurses have been...are second now to protective services in being assaulted in the workplace. The Emergency Department Violence Surveillance study that was conducted by the Emergency Nurses Association...that there has been 15 percent of emergency nurses across the United States that have been assaulted in a seven-day period. So the frequency is increasing. The violence in our hospitals and our facilities and in our work settings is increasing. And it appears that it's not taken seriously, because oftentimes people that are intoxicated or under the influence of drugs or alcohol are not being arrested and taken to jail but are actually released with no result or with no consequences, and the victim has to suffer the result of the injury--the nurse. Thank you. [LB677]

SENATOR ASHFORD: Thank you. Very good comments. Other proponents? [LB677]

ANGELA JEDLICKA-LLEWELLYN: (Exhibit 22) Good afternoon. I am Angela Jedlicka-Llewellyn. I have been a nurse for 22 years. And I am the face of LB677. While at work one day I got beat up. I ended up with a black eye, I had a blood contamination, and nothing was done to the assaulter. He was allegedly intoxicated. I ended up with a laceration, a black eye that was swollen shut, and I had to go back to work with that. It is very difficult to go back to work with a black eye. It is difficult to go out into public. I went out to dinner with my brother, and these elderly ladies pulled me aside and said: Honey, if that's your husband and he's beating you, you don't have to take that. I don't understand why it's okay to beat a nurse. We are there to provide healthcare, we are there to provide help, and it is unacceptable to me to get beat up at work. Thank you. [LB677]

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SENATOR ASHFORD: Angela, you're right. It is unacceptable. [LB677]

ANGELA JEDLICKA-LLEWELLYN: Yeah, it's unacceptable and it needs fixed. [LB677]

SENATOR ASHFORD: And we agree that it is unacceptable, I think. I don't want to speak for anybody else, but I bet we all agree with you on that. [LB677]

ANGELA JEDLICKA-LLEWELLYN: And I must admit that, yes, I did cry like a girl when I bent over and my eye was bleeding. But it's... [LB677]

SENATOR ASHFORD: Well, thank you for serving us for 22 years. [LB677]

ANGELA JEDLICKA-LLEWELLYN: It's horrible. [LB677]

SENATOR ASHFORD: I'm sorry what happened, happened. And maybe we can address it here so. [LB677]

SENATOR MCGILL: Angela, do you know what happened to him? [LB677]

ANGELA JEDLICKA-LLEWELLYN: Nothing. [LB677]

SENATOR MCGILL: He wasn't charged at all? [LB677]

ANGELA JEDLICKA-LLEWELLYN: He was not charged. He was...nothing was done. [LB677]

SENATOR MCGILL: Because they would...under this you'd still have to be charged in some way. [LB677]

SENATOR HARR: He wouldn't be charged under this. [LB677]

SENATOR MCGILL: Hmm? [LB677]

SENATOR HARR: He wouldn't be charged under this. [LB677]

SENATOR MCGILL: Oh, okay. [LB677]

ANGELA JEDLICKA-LLEWELLYN: No, he was not charged with anything. [LB677]

SENATOR MCGILL: Not (inaudible) or under current statute of assault? [LB677]

SENATOR HARR: Well, because you have to be charged, first, before this bill takes place. [LB677]

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ANGELA JEDLICKA-LLEWELLYN: Because he was allegedly intoxicated. [LB677]

SENATOR ASHFORD: Right, not... [LB677]

SENATOR MCGILL: Oh, okay. Okay. [LB677]

ANGELA JEDLICKA-LLEWELLYN: Yes, yes. [LB677]

SENATOR ASHFORD: We get it. Sorry. [LB677]

ANGELA JEDLICKA-LLEWELLYN: Me too. Me too. So if you have to put a face with this, put my face on it. [LB677]

SENATOR ASHFORD: Well, you're a heck of a face to put with it. [LB677]

ANGELA JEDLICKA-LLEWELLYN: (Laugh) Thank you. [LB677]

SENATOR ASHFORD: Thank you very much, Angela, seriously. It is a serious thing and we take it very seriously. Thank you. [LB677]

ANGELA JEDLICKA-LLEWELLYN: Thank you. [LB677]

SENATOR ASHFORD: Next proponent. Opponent? Neutral? Senator Lathrop. [LB677]

SENATOR LATHROP: Just briefly maybe to wrap up on LB677. I think you've heard the testimony. The hospitals, particularly in the urban areas, are becoming a gathering place for people that are meanspirited people that are willing to hit and hurt and injure folks. And I think LB677 takes a unique approach to this problem, and I would encourage the full committee to move it to the floor for General File. [LB677]

SENATOR ASHFORD: Well, for me, it's something we've worked on for four years, this committee has, and...I mean, yeah, it's very timely. Senator Council, you had an idea about it. [LB677]

SENATOR COUNCIL: I mean, I was just going to ask you, Senator Lathrop, had you given any thought to--and I know you said you didn't want to pursue the enhancement route--but given any thought to utilizing the enhancement route available through establishing zones? Like we have drug-free zones and... [LB677]

SENATOR LATHROP: I didn't. And I wouldn't be averse to that. You know, I took a different tack with this by, number one, having the signs, and number two, having mandatory jail sentences instead of increasing it, because I sit right in that chair and

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listen to people come in and say, my group should be protected, let's bump it up one notch. And those very seldom go anywhere. And I thought I'm going to at least put something in that's different so that we can talk about how do we address some of these circumstances. And that may be a wonderful way to do it, which is if you're involved in an assault, then I suppose it protects the two people in the waiting room that want to start fighting one another right there. [LB677]

SENATOR ASHFORD: And that's what I...that's a great point because that happens all the time. I mean, Brenda and I have worked on investigating that issue on the...with our program. And, yeah, there are any number of... [LB677]

SENATOR LATHROP: I do think the signs are kind of an important part of this. [LB677]

SENATOR ASHFORD: Well, I like the signs because people don't realize... [LB677]

SENATOR LATHROP: It's an interesting approach. Apparently the pharmacists thought they were going to be included and didn't want to have a sign, nor did the nursing homes, which is fine. They shouldn't be involved in this. But I think just the reminder that, hey look, you're going to end up doing time and confined if you fight in this, either with a medical provider or in this area. [LB677]

SENATOR ASHFORD: This is very important stuff, because our healthcare...I mean, we've gotten to the point now in America where that's what's happening. People are going to the emergency rooms for treatment for all sorts of things, and they have...and there is gang involvement, and there's drug and alcohol...I mean, it's just every day. This is a very cool idea. Thank you. [LB677]

SENATOR LATHROP: Great. Thank you. [LB677]

SENATOR ASHFORD: (See also Exhibits 28, 29, 30 and 31) Okay. You know, this is truly unbelievable: two times in one week? [LB677]

SENATOR HADLEY: Senator Ashford, I've just gotten to enjoy this committee so much that it's...I may come in every day now. (Laughter) [LB242]

SENATOR ASHFORD: Well, actually, we kind of enjoy you. [LB242]

SENATOR HARR: Thank you, Senator Christensen. [LB242]

SENATOR HADLEY: (Laugh) [LB242]

SENATOR ASHFORD: Okay, LB242. [LB242]

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SENATOR HADLEY: Senator Ashford, members of the Judiciary Committee, again it's a pleasure to appear before you. This is being done at great cost because they've got the TV cameras down in my other committee and I'm missing that. [LB242]

SENATOR ASHFORD: What's your bill over there? [LB242]

SENATOR HADLEY: Well, you know, city taxes. [LB242]

SENATOR ASHFORD: Taxing Omaha again? [LB242]

SENATOR HADLEY: Omaha city taxes. [LB242]

SENATOR ASHFORD: Or...yeah. [LB242]

SENATOR HADLEY: So okay. LB242 pertains to the assault of a Department of Health and Human Services office of official juvenile services employees while working in a YRTC youth rehabilitation training facility for delinquent juveniles. And I will quickly tell you what the bill does. It basically amends current statute relating to crimes and offenses against peace officers, probation officers, and employees of the Department of Correctional Services to include Department of Health and Human Services Office of Juvenile Services staff who work at a YRTC for youth adjudicated as a delinquent; establishes parity for staff in the youth rehabilitation and treatment center 24-hour facilities operated by DHHS with workers holding similar job classifications, duties and functions within the state Department of Correctional Services; provides county attorneys the ability to file felony charges against a juvenile, process him or her through the adult criminal justice system who commit an assault, a terroristic threat, kidnaps or falsely imprisons DHHS staff during the course of performing their duties within these facilities. It is expected that by increasing the consequences for juveniles who commit these identified crimes against DHHS OJS staff, the number of these types of crimes, especially assaults at the YRTC facilities, will decline and, in turn, will provide a safer environment for both staff and other use. Thank you, Senator Ashford. [LB242]

SENATOR ASHFORD: Thank you, Galen, very much. Any questions of Galen? Senator Council. [LB242]

SENATOR COUNCIL: Thank you, Senator Ashford. Senator Hadley, didn't we have a similar bill... [LB242]

SENATOR ASHFORD: I think the same one or a similar bill last year. [LB242]

SENATOR COUNCIL: Didn't we have a similar bill last year and we specifically... [LB242]

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SENATOR ASHFORD: Two years ago maybe or... [LB242]

SENATOR COUNCIL: Two years ago. And one of the issues was it included YRTC?
[LB242]

SENATOR ASHFORD: Shannon was here, I know that. [LB242]

SENATOR HADLEY: I thought, Senator Council, that that included regional centers,
that bill. [LB242]

SENATOR COUNCIL: The original bill, though, also included YRTCs. [LB242]

SENATOR HADLEY: That's right, but it included regional centers. And there was a
concern, I believe in that bill, with regional centers, the mentally impaired being
punished when they did not have the capability of distinguishing right and wrong.
[LB242]

SENATOR ASHFORD: Right. Right. I think Speaker Flood had a bill and it was a little
broader. [LB242]

SENATOR COUNCIL: Okay. [LB242]

SENATOR HADLEY: That's right. That's right. [LB242]

SENATOR ASHFORD: But, you know, I've thought about this, and I don't know who
else is going to be testifying, but one of the questions I had on this the last time it was
here and I didn't bring it up, but I would ask others to maybe comment on this that know
more about it--Shannon, for example. I understand it's a problem at YRTC. I get that
part. One of the questions I had in my own mind was rather than file these in the adult
court and then have it waived down to juvenile court, what we...because they're there
under YRTC, you know, they're under juvenile services, one of the thoughts I had was
to have it filed first in juvenile court, which is not the normal course in Nebraska, though
it is in every other state in the United States but not in Nebraska, maybe having these
kinds of cases filed there first, and then if it's serious enough it could be prosecuted
upstairs. I don't know, but maybe Shannon could comment on that. [LB242]

SENATOR HADLEY: Shannon can. Okay. [LB242]

SENATOR ASHFORD: Thanks. [LB242]

SENATOR HADLEY: Thank you. [LB242]

SENATOR HARR: Where would the charges be filed? Kearney or...? [LB242]

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SENATOR ASHFORD: Well, this is such a unique situation because they're already in youth services. But anyway, thanks, Galen. [LB242]

SENATOR HARR: Well, okay. Thanks. Sorry. [LB242]

SCOTT GREGORY: Hello. My name is Scott Gregory, S-c-o-t-t, last name is G-r-e-g-o-r-y. I'd like to thank the members of the committee who are here today and Senator Hadley for sponsoring this bill, as well as the other state employees who are here today to testify in attendance. I'm here to testify in favor of LB242. I am a teacher at Geneva North High School, which is located on the YRTC-Geneva campus. I've worked for the state for four years. Before that I taught social studies at Sutton Public Schools for six years. I joined the state because I wanted to use my talent and abilities to help those who needed it the most. I work in a self-contained classroom setting helping adjudicated, acute, dual diagnosis girls aged 12 to 18 with earning credits, attaining graduation, as well as earning a GED. I have personally handed 25 girls their high school diploma. And, believe me, there isn't any more gratifying experience one can have. I have been engaged in 19 physical interventions when youth have attempted to hurt themselves, staff, or other youth. Two summers ago I was involved in an intervention when a youth who was being restrained turn her head and bit me on the back of my arm. Due to this event, I have found that it has impacted me personally, financially, and it has impacted my family. After this event, I became very tense and nervous and lost a lot of sleep. I noticed that when the general mood around me was very good or we were in public settings, I felt numb, that I was completely out of sync and out of tune with what was going on around me. Realizing this was a problem, I did seek help. I was diagnosed as having PTSD due to this event. Financially, I soon discovered that while I had three free counseling sessions to help me with it, anything after that would be out of my own pocket. The only way I could obtain more free service would be to sever contact with whom I was seeing and drive to Omaha to UNO to see an intern. It took roughly 13 visits to adequately help me get through this situation. In regards to my family, I at the time believed that it did not impact my wife or my three children at all. I discovered later that this was wrong when my five-year-old son Aidan (phonetic) told my wife: Daddy got bit and he is sad. By no means do assaulted employees expect a person they are serving to be locked up and the key to be thrown away. In passing this bill, you will be allowing judges a wider option of choices in choosing to deal with assaults. In some cases, charges may not be brought up. In other cases, the perpetrator may need to face consequences of their behavior that reflects the seriousness of it. And in regards to deterrence, I can tell you from personal experience, deterrence does work. I have personally seen a fist or two unclench when a person said: I press charges. So please consider supporting LB242. I definitely would appreciate it. Thank you. [LB242]

SENATOR ASHFORD: Thanks, Scott. Any questions of Scott? Thank you. Thanks for

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coming down. Shannon (sic). [LB242]

SHAWN EATHERTON: And, Senator, I've been called a lot worse, but I'm Shawn Eatherton. I'm the Buffalo County Attorney. I'm representing the Nebraska County Attorneys. [LB242]

SENATOR ASHFORD: In this court...in this place...in this hearing room, you're Shannon. No. [LB242]

SHAWN EATHERTON: Which is fair enough for me. And I was so excited when I saw the schedule yesterday and saw the two bills that I want to talk on are first and second, and then I show up today and I get... [LB242]

SENATOR ASHFORD: Well, but we recognized you right away when you came back, whatever your name is. (Laugh) [LB242]

SHAWN EATHERTON: Well, I appreciate you "bookending" me so I get to spend the whole day in Lincoln. I'm certainly here in support, in support of this bill and I think LB242. I don't want more juveniles in my jail, okay? I do not want more juveniles in my jail. But I want to deter them from this type of behavior. And right now, with it only being a misdemeanor out at the YRTC, if they commit an assault, it doesn't protect anybody and there is no deterrent whatsoever to that youth, period. It can't be pursued. They're already at the highest level. [LB242]

SENATOR ASHFORD: Right. [LB242]

SHAWN EATHERTON: And so to protect the staff who we are putting in close proximity with people that--frankly, there are some very violent individuals at the YRTC. I certainly am only speaking for Kearney, with who I work with all the time, but if you think they're just children, there are a lot of people there that are not just children. [LB242]

SENATOR ASHFORD: I don't think we think that. [LB242]

SHAWN EATHERTON: Well, I just want to make sure to dispel any idea. [LB242]

SENATOR ASHFORD: Yeah. [LB242]

SHAWN EATHERTON: And I want to give the protection to those employees. But more so, I want to deter the behavior, because when those youth end up in our jail they're the worst inmates bar none. They're destructive. They're hard to deal with, sight and sound, all the issues that go with it. I want to stop them from ever getting there. And I believe that they know the crimes that can get them removed from the YRTC: escape, for example. There's no wall. There's no fence. But we do pursue escapes and it controls

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the behavior and controls them from running. So I'm asking for the support of this bill this time around, ask it be sent to the floor for discussion. I think it will serve its purpose and I certainly think that the people who work in the close proximity of these youth every day deserve the protections that this bill would give them. Thank you. [LB242]

SENATOR ASHFORD: Burke, yeah. [LB242]

SENATOR COUNCIL: Can I ask a question? Thanks... [LB242]

SENATOR ASHFORD: Burke first and then Senator Council. [LB242]

SENATOR COUNCIL: Oh, I'm sorry. [LB242]

SENATOR HARR: Sorry. Thank you. Thank you, Mr. Chairman. And I do appreciate what you're saying. I do think it's a problem. I guess I have a question. Is a kid comes from Douglas County, he's under the juvenile jurisdiction, and then he...we get this assault on an officer. Is he immediately removed from the, let's pretend it's Kearney because that's what I'm familiar with. I realize it's (inaudible) but let's just say it's Kearney. Is he then held in Kearney or is he transferred to the county jail in Buffalo County? [LB242]

SHAWN EATHERTON: Well, he would be....it would depend on the age and some other factors. Most of the time he would be transferred to the jail, processed as in booked in, and then the majority of the time taken back to the staff-secure location at the YRTC. I'm only speaking for Kearney. [LB242]

SENATOR HARR: Yeah,... [LB242]

SHAWN EATHERTON: I don't know exactly how they do it in Geneva. [LB242]

SENATOR HARR: ...and I appreciate that. [LB242]

SHAWN EATHERTON: Depending on the history and the level of violence, he may be held at the jail, but oftentimes...basically, get the taste of jail, taken back to the YRTC. [LB242]

SENATOR HARR: Yeah. And then if his time was up on his underlying charge, he would still remain at Kearney? [LB242]

SHAWN EATHERTON: Well,... [LB242]

SENATOR HARR: Or would he transfer back? [LB242]

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SHAWN EATHERTON: ...understand that there's no time limit. And so if a youth has gotten into that type of trouble, likely his program hasn't ran. There's no seven months, eight months. I mean other than aging out,... [LB242]

SENATOR HARR: Yeah. [LB242]

SHAWN EATHERTON: ...there's not a set time frame. And so it would kind of depend on the individual youth and how they're working through their program. Most of the time we're operating somewhat faster than they're working through. I mean not that the...the program is fairly quick, but we have a pretty quick setup of getting those kids, because we realize those youth, the situation that they're in, you know, we make that decision whether it's going to be in juvenile court, adult court. We make that fairly quickly so that we can get them through. [LB242]

SENATOR HARR: Okay. Thank you. [LB242]

SENATOR COUNCIL: I just had a question. Yes, thank you. And thank you, Shannon (sic), for testifying. And I appreciate the concern that is being expressed and the need to provide protection for correctional and youth facility officers. I'm just wondering, I mean why aren't these assaults being prosecuted under the current statutes as they exist? [LB242]

SHAWN EATHERTON: Well, they are, but that's no deterrent effect. Because the youth, they're already at the highest level of punishment possible. So getting another...doing some other sort of a prosecution and getting another adjudication does nothing, because that youth is already at the highest level of placement that we can give. So there's no deterrent effect. [LB242]

SENATOR COUNCIL: Okay, but that's because they've been prosecuted as a juvenile, that they're at the highest level for a juvenile. And under, as I understand LB242, the decision still could be made to prosecute them as a juvenile. [LB242]

SHAWN EATHERTON: That is correct. [LB242]

SENATOR COUNCIL: And so none of these provisions could ultimately apply to them. They could be referred back to juvenile court. [LB242]

SHAWN EATHERTON: Oh, certainly. Or there could be a motion to transfer that was successful, depending on the background and the history and the other things that go with it. [LB242]

SENATOR COUNCIL: Right, and I guess that's what I'm trying to distinguish. Because as the law currently exists, if you intentionally and knowingly cause bodily injury to

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someone, it's assault in the first degree--and it's a Class II felony? [LB242]

SHAWN EATHERTON: Well, you'd have to have the serious bodily injury there. Certainly, on those felonies, absolutely. They're already prosecuted. We're talking about more along the third-degree assault line. [LB242]

SENATOR COUNCIL: Okay, but that's not what the...I mean every level is being... [LB242]

SHAWN EATHERTON: Yes, every level is being upped, but it's the lowest one that gives us the most...that is the largest change. [LB242]

SENATOR COUNCIL: And that's the third degree. [LB242]

SHAWN EATHERTON: Correct. [LB242]

SENATOR COUNCIL: Right, but that's what I'm saying but...the question I'm asking is, why do we need to insert or a youth rehabilitation and treatment center for a Class I, a Class...I mean for assault in the second degree, assault in the first degree, because those are already felonies, whether it's on a youth correctional officer or someone walking down the street. It's assault in the third degree which is the one that results in a misdemeanor, and that's the one that you're saying doesn't serve as any deterrent. [LB242]

SHAWN EATHERTON: Absolutely, that is correct. [LB242]

SENATOR COUNCIL: Okay, so that...and then, because that gets to the question. I guess I'm questioning why the bill covers first degree and second degree, you know, makes a special offense for assault on a youth rehabilitation center worker if it's first degree or second degree, when they should already be able to prosecute them on that. [LB242]

SHAWN EATHERTON: Right. And not wanting to speak for the senator, I mean my belief is that, frankly, it mean it does...it ratchets up the penalty because we're... [LB242]

SENATOR ASHFORD: It's an enhancement. [LB242]

SHAWN EATHERTON: It is. It's enhancement. [LB242]

SENATOR ASHFORD: Okay. [LB242]

SHAWN EATHERTON: We're putting people in that situation, I think. [LB242]

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SENATOR ASHFORD: Right. [LB242]

SHAWN EATHERTON: At least that's my understanding and would be my rationale as well. [LB242]

SENATOR COUNCIL: Okay. [LB242]

SENATOR ASHFORD: Thanks, Shawn. I think the troublesome part of this, and it was before, and maybe Todd could speak to it, I mean these...they're not on probation, they're not...they're in the custody of Health and Human Services and they're on a treatment plan, and they then commit this other offense, and you're enhancing the misdemeanor to a felony as a deterrent. I see what you're doing. My question before, and I guess we don't have to get into it now, we'll talk about it in the committee, is whether or not those ought to be filed in juvenile court because of the prior history. But we'll talk about it. [LB242]

SHAWN EATHERTON: Right, and I appreciate that. I do thank you for your time. [LB242]

SENATOR ASHFORD: Yeah. [LB242]

SHAWN EATHERTON: I would again turn and take a look at how we handle escapes. I would offer it under the same concept. [LB242]

SENATOR ASHFORD: Right. I get the dilemma you're in. I get it, so thanks. [LB242]

SHAWN EATHERTON: Thank you. [LB242]

SENATOR ASHFORD: Todd. [LB242]

TODD RECKLING: (Exhibit 24) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the director for the Division of Children and Family Services within Health and Human Services. I'd like to thank Senator Hadley for introducing LB242 on behalf of the department and on our staff. I'm here to testify in support of this bill today. This proposal will amend Nebraska Revised Statute Section 28-929 through 933, and 28-309, which as currently written provide protection to law enforcement officers and Department of Correctional Services staff from assaults, terroristic threats, kidnapping, and false imprisonment. This bill will add to the current law employees who work at the youth rehabilitation and treatment centers that serve youth adjudicated as delinquents. When the Office of Juvenile Services transferred from the Department of Correctional Services to what it now the Department of Health and Human Services back in 1997, the criminal statute that provided protection for law enforcement and correctional staff were not amended to

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include identified OJS staff that were transferred to the department. This proposed amendment will establish parity for our staff in the YRTC's that are operated by Health and Human Services, with workers holding similar job classifications, duties and functions within the state Department of Correctional Services. The YRTC staff are well-trained in all areas of programming, safety and security; however, during state fiscal year '09 and '10 there were a significant number of youth-on-staff assaults. These assaults have resulted in such things as broken bones, knee injuries, contusions, stabbings, being bit, and other physical injuries which have required medical attention. Some employees have been off work for extended periods of time as a result of physical and emotional injuries incurred during assaults, with some choosing not to return to their employment upon the advice of therapists. Please see the attachment in your packet related to specific statistical data. Passage of this bill will allow county attorneys to charge a juvenile who commits an assault on YRTC staff with an adult felony and process them through the adult criminal justice system. These individuals would be served in a higher level of structure, care, and treatment at the Nebraska Youth Correctional Facility in Omaha rather than just being recommitted back to the YRTC's. You'll hear testimony today from two of our staff that were assaulted at the YRTC's. It's my belief that giving the county attorney this avenue of prosecution other than just a repeat commitment back to the YRTC's is critical in providing a safe and therapeutic environment for our other youth that are there as well as our staff at the facilities. Thank you and I would like to say that again I support LB242 and I would be happy to answer any questions. [LB242]

SENATOR ASHFORD: Yes, Senator McGill. [LB242]

SENATOR MCGILL: Hi, Todd. [LB242]

TODD RECKLING: Senator. [LB242]

SENATOR MCGILL: So the number has been going up over these couple of years that you addressed in terms of this youth-on-staff violence? [LB242]

TODD RECKLING: Yes, Senator. [LB242]

SENATOR MCGILL: Any theories? If a kid is coming in with bigger mental health issues? Are they coming in...yeah. [LB242]

TODD RECKLING: You hit it right on the head. We don't have absolutely conclusive evidence, but based on the experience and the stats that we do manage and information from our staff and our reviews of those critical incidents, we are dealing with some tougher kids. As was said earlier, I know you're well aware that this is the highest level of commitment for a juvenile served under the juvenile code prosecuted and adjudicated as a juvenile. So we get the toughest of tough kids. And what this would do

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then would, in our opinion, would be a deterrent. Because what this changes, and in response to Senator Council's question, is right now the deterrent is that they just go...they know that the highest thing that can happen to them is they're going to come back to the YRTC's. What this would do is if they are prosecuted under that adult situation for that felony, they would actually be moved into the Omaha youth facility, which we've never had an opportunity to use that facility in such a way as this before. [LB242]

SENATOR MCGILL: As I'm sure you would know, I would say we need better services for these kids that if they're getting this bad and earlier in truancy is one of the first steps, obviously, in trying to prevent that, but... [LB242]

TODD RECKLING: And we want to serve their treatment needs first and foremost... [LB242]

SENATOR MCGILL: Yeah, I'm sure. [LB242]

TODD RECKLING: ...and that's what we're there for. But there are also some kids that... [LB242]

SENATOR MCGILL: They're coming in worse and worse though, which shows something is changing in our society that's made it get worse and worse. [LB242]

TODD RECKLING: And we're doing a better job with our reviews of the situations and documentation, so I think that's reflective in the numbers as well. Our staff are highly trained and, as we document those incidents and review them for learning purposes, I think we're getting better with our data collection as well. [LB242]

SENATOR MCGILL: Good. [LB242]

TODD RECKLING: But those kids are high, high needs. [LB242]

SENATOR MCGILL: All right. Thank you. [LB242]

SENATOR ASHFORD: They're high needs and it seems to me that what we're doing and what you're doing, I applaud the department for your cooperation and leadership in these areas, is we are developing building a continuum, much more effective continuum from early intervention through. And there are those kids at the other end that have not committed a serious enough crime to be charged as adults. They're in the juvenile system. Then they commit another offense. You run out of options and I get that, you run out of options. Of course, as Senator McGill absolutely rightly says, the better...and you know this, the better course is the early intervention with the trigger events that we're working on in the program in Douglas County which is seeing a significant

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reduction in referral over to youth services but...and the mental health issue. [LB242]

TODD RECKLING: And this would help all the youth, as you indicate, because there are youth there that absolutely want to rehabilitate and treat themselves. [LB242]

SENATOR ASHFORD: Right. [LB242]

TODD RECKLING: I've got a handful of these kids that some of those just want to be confined and are assaulted. [LB242]

SENATOR ASHFORD: Right. And in talking to Bob Houston, he estimates it's 10 to 20...10 percent maybe or 15 percent of these kids are a pretty serious issue. I don't know what the number is but he kind of thought it was...it wasn't the majority, right? [LB242]

TODD RECKLING: Yeah, it's certainly a smaller number. [LB242]

SENATOR ASHFORD: Right. [LB242]

TODD RECKLING: But those take up the significant,.... [LB242]

SENATOR ASHFORD: Right. [LB242]

TODD RECKLING: ...most significant amount of time from staff to deal with. [LB242]

SENATOR ASHFORD: Right. So there are two things. One is...and I don't want to belabor it, it's Friday afternoon, but there are all these...one thing you've done a good job of, Todd, is identifying these spots along the way before they get to this point. So I do have confidence that you're making the efforts on the way too. I do have that confidence now. I think you guys have done that. And then of course the mental health overlay is...you've always been candid about that issue that mental health is pervasive in these cases--and it's tough. [LB242]

TODD RECKLING: Thank you, Senator. And our staff do a great job. [LB242]

SENATOR ASHFORD: Yeah. Now the last question I have is, were any of these employees at the Department of Corrections before this was transferred over? Are these generally all new people or did some of them transfer over to HHS when you took over? [LB242]

TODD RECKLING: We actually have some longstanding employees at our YR... [LB242]

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SENATOR ASHFORD: Because that was '97, so that is...well, I guess that's 14 years ago but... [LB242]

TODD RECKLING: Yeah. But, no, we have some longstanding staff at both facilities, so some of them would have been under the other Department of Corrections but... [LB242]

SENATOR ASHFORD: And they would have had this protection under the old law, correct? [LB242]

TODD RECKLING: Our whole facilities. Keep in mind, the facilities themselves, as well as the employees, transferred from the Department of Corrections over to... [LB242]

SENATOR ASHFORD: Right. [LB242]

TODD RECKLING: So the facility in and of itself, and the operations. And unfortunately this piece of the protection toward our staff didn't come over with it. [LB242]

SENATOR ASHFORD: Okay. Okay. Okay, thanks. I'm taking too much time. [LB242]

TODD RECKLING: Thank you, Senators. [LB242]

SENATOR ASHFORD: All right. Other proponents? How many proponents do we have? Great, come on up. [LB242]

JAN MYERS: (Exhibit 25) The pictures I brought are not pretty. They're in your packet. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Jan Myers, J-a-n M-y-e-r-s. I'm a registered nurse and I am the nursing supervisor at the Youth Rehabilitation and Treatment Center in Geneva, Nebraska, for delinquent female youth. I would like to thank Senator Hadley for introducing LB242. I'm here to testify in support of LB242. I've been employed at the Youth Rehabilitation and Treatment Center in Geneva for 18 years, and I was part of the Corrections. I've been there since 1993. So when it changed in '97, I became part of the Department of Health and Human Services. I have personally experienced injuries as well as I've observed injuries to other staff as a result of violent assaults by the delinquent youth committed to the facility. My personal experience involved a very violent youth who had assaulted several staff members in Burroughs Cottage, which is our orientation cottage for newly committed youth. This particular youth had been very angry and had done extensive damage within the cottage. The assaultive and destructive conduct resulted in a physical intervention by staff, at which time this particular youth was placed in room confinement and in wrist restraints. I was called to do a medical assessment of her wrists in the morning, to provide medical attention if necessary, and to nurture her, which is standard procedure. At the time, she kicked me in the knee. A few minutes

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later, I was called back to the cottage to check on her. She seemed much calmer and the wrist restraints were removed by staff. I massaged her wrists, wiped her face with a cold cloth, and told her that she would be okay. Staff wanted me to assist this youth into changing into isolation clothing, which she refused to do with me in the room. I exited the room and watched her attempt to flush the clothing down the stool. I entered the room, with the approval of the assistant facility administrator, and attempted to retrieve the clothing. At that point in time, the youth hit me in the face with her fist without warning or provocation. I was taken to the Fillmore County Medical Center for treatment. It was determined that I had a broken septum and a cracked right sinus. I did return to work the following day, looking like this. I felt that if I did not return and face my fears, I would not return again. A no-contact restriction between myself and this particular youth was implemented, which is standard procedure in these types of situations. In addition, it was implemented because of her threat of hitting me again if she saw me. My medical treatment required two surgeries and I was in the hospital for two days. I have brought pictures of my injuries for your review so that you can see that (inaudible) physical damage of this assault. In addition to the physical injuries, I found myself waking in the night with terrors, crying and being very much afraid. I was hypervigilant and would awaken to the sound of cars driving by our farm home at night. My family wanted me to change careers. I experienced a level of posttraumatic stress disorder and found it necessary to speak with a psychologist, as well as my personal physician. I do enjoy my work with the youth at the facility. It's my job to deal with difficult youth on a daily basis and it is very rewarding. However, I also do not feel the youth have the right to assault me or others without serious consequences. Many of the staff who have been assaulted over the years by these youth were only doing their job. Some of these staff have required surgery to correct physical injuries. Some have required therapy to deal with the violence. Some have required both. Some have simply not returned to work. We have the right to a safe and supportive environment. We continue to develop and utilize new tools to help us: motivational interviewing, additional training, clinical staffing, and removing assaultive, aggressive youth to a more restrictive environment. I'm excited about this bill and I support it. I am also appreciative of those who are bringing it forward. It's truly a sign of the support that is needed to help staff to continue with the very important job of rehabilitation and development of young lives. Thank you for the opportunity to express my thoughts. I'll be happy to answer any questions that you have. [LB242]

SENATOR ASHFORD: Senator Coash. [LB242]

SENATOR COASH: Thanks you, Chairman. Hey, thanks for coming, Jan, and sharing your story. [LB242]

JAN MYERS: Thank you. [LB242]

SENATOR COASH: I want to ask you a question as somebody who, you know, works

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with juvenile offenders every day, and you've got a good understanding of how these juveniles act and behave. Will these...would a bill like this...I won't ask you if it would have prevented what happened to you, but do you think that putting a bill like this in place will deter the behavior that led to your injury? [LB242]

JAN MYERS: I do. I think mostly for maybe a 16-, 17-, 18-year-old, they think that nothing is going to happen to them because they're a juvenile. If they knew that there was a felony involved, I do think it would deter them. In the orientation, I talk to them, and because it's an open campus, there's no razor wires, whatever, and I tell them what happens if you escape from here. And they say: I'm not going to run, that's a felony. They know what a felony is and I think it would deter them. [LB242]

SENATOR COASH: You said if they knew. Is there any...I mean...and I'll only ask you to speak about your work in Geneva, but is it reasonable to assume that they would find out? I mean... [LB242]

JAN MYERS: Yeah, I think in... [LB242]

SENATOR COASH: ...I mean in a formal way? [LB242]

JAN MYERS: Yeah, in that orientation process, we tell them if you escape you will be charged with a felony. I think in the orientation, if this were to become law, we would say, if you were to assault a staff member here and would be charged with a felony, I do think it would make a difference. [LB242]

SENATOR COASH: Okay. Thank you, Jan. [LB242]

JAN MYERS: Other questions? [LB242]

SENATOR ASHFORD: Thank you, Jan. [LB242]

JAN MYERS: Thank you. [LB242]

SENATOR ASHFORD: Next proponent. [LB242]

MARK DARBY: (Exhibit 26) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Mark Darby, M-a-r-k D-a-r-b-y. I'm a Youth Security Specialist II at the Youth Rehabilitation and Treatment Center in Kearney for delinquent male juveniles. I'd like to thank Senator Hadley for introducing LB242. I'm here to testify in its behalf. I have been employed at the Youth Rehabilitation and Treatment Center in Kearney for nearly three years. I have personally experienced injuries, as well as observed injuries to other staff as a result of violent assaults by delinquent juveniles committed to the facility. My personal experience involved a violent juvenile who

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assaulted me in Washington Living Unit. This juvenile had been very angry and walked away from his assigned group and threw two chairs. While using verbal de-escalation techniques taught by YRTC, the juvenile jumped out of a chair he was seated in and struck me twice with his fist, once to the left eye and once to the left side of my mouth. The juvenile continued to struggle with me as we fell to the floor. He attempted to reinjure my left knee that had previously been injured by a youth in a gang altercation in the dining facility. Once help arrived, I managed to crawl away and lost consciousness. I regained consciousness when two staff picked me up and removed me from the room. I was taken to Good Samaritan Hospital for treatment. It was determined that I had fractured my left orbital floor and a laceration requiring several stitches to close. In the days and weeks following the incident, I had to receive further medical treatment for my vision and pain. I have brought pictures of these injuries for your review so you can see the seriousness of this assault. This assaultive behavior has affected my job performance to the point that I've had to seek medical/mental health treatment following the juvenile's return to YRTC. There are times since the incident that I felt like a target, as there are juveniles that have returned to YRTC that are familiar with what happened. I've had comments made to me such as "you didn't learn the first time" and "I'm going to finish what the other juvenile had started." I've told my supervisors that I'm here to protect the youth and not to hurt them and I shouldn't be afraid to do my job. I've walked away from a juvenile at times out of fear of what the juvenile might do. There are days, especially when it's cold, that I relive that evening, as there is lingering pain on the left side of my face as a result of the injury. I received many hours of counseling and I have and continue to change the way I handle different situations, as dictated by the types of juveniles I deal with on a daily basis that are committed to the facility. Some of my coworkers have also been affected by these violent assaults by juveniles. One such case occurred in 2008, when a number of youth assaulted two night staff in an attempt to escape. Both staff required extensive medical attention at the hospital and missed numerous days and weeks of work. Staff have made statements to the effect, it makes you have to keep looking over your shoulder or look out the corner of your eye because you never know what could happen next. In the short time I've been employed at YRTC, I have seen staff get shoved, spit on, bit, punched, kicked, hit with chairs, wood, encyclopedias, and even a fire extinguisher. With passage of this bill there will be consequences and hopefully this will stop some of these juveniles from committing these violent acts on staff. Thank you for this opportunity for me to express my experiences with you. I'm happy to answer any questions you might have. [LB242]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB242]

SENATOR LATHROP: Are these kids getting prosecuted now? [LB242]

MARK DARBY: Well, the youth that I was with, he was sent out of the facility for a maximum, I believe it was, 59 days. I'd have to confer with the county attorney. He returned to YRTC and was put back in population until he reached the age of 18. I went

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to his court date following that, and he was sentenced to Buffalo County jail for a matter of six months... [LB242]

SENATOR LATHROP: So they are being prosecuted. [LB242]

MARK DARBY: ...as a misdemeanor. [LB242]

SENATOR LATHROP: Okay. [LB242]

MARK DARBY: In this particular case. Cases like the fire extinguisher never even saw the light of day. [LB242]

SENATOR LATHROP: It never was prosecuted. [LB242]

MARK DARBY: Right. [LB242]

SENATOR LATHROP: And that brings me to...and that's kind of what the theme of the day has been: What's the point in increasing the penalties if they're not even being prosecuted under the original statute? [LB242]

MARK DARBY: Well, a lot of...sure. As the county attorney had said, a lot of these get brought right back to YRTC. They're done as juveniles and they're right back. We've got several youth that come right back even after several assaults. [LB242]

SENATOR LATHROP: Okay. [LB242]

SENATOR ASHFORD: This is a...we've had this twice, this bill twice now, and it was a different bill, Senator Hadley rightly says, but getting at this issue. And this is a particular situation that is unique in the state, and I just can't figure out what to do because it's...you're right, there needs to be a consequence to what happened to you and Jan, no question. [LB242]

MARK DARBY: Uh-huh. [LB242]

SENATOR ASHFORD: But I wonder if there's something also...and we're not going to get into this today but thinking about is there something that can be done internally within YRTC that would...some other sanction or graduated sanction that might apply. I've talked to Bob Houston a lot about this, and his response has always been, well, I'll take them back, you know, and we'll get them in...but I mean there's something going on here, obviously, and it's unique to this facility in the state or these facilities in the state. And I haven't quite figured out what to do but I... [LB242]

SENATOR LATHROP: Are they on a hard sentence there? [LB242]

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MARK DARBY: No, they are not on a hard sentence. [LB242]

SENATOR LATHROP: So the reality is that if they were throwing a chair around the room or breaking something, they're going to stay there longer, and if they hurt somebody they're going to stay there longer, right? [LB242]

MARK DARBY: Not necessarily. It all depends on how they're progressing with their own treatment. [LB242]

SENATOR LATHROP: But isn't this...okay, and maybe we've answered the question or at least I have in my own mind. If you send a kid, and let's make a hypothetical 15-year-old coming out of Omaha, we send him to the youth corrections facility, and if he behaves and he progresses and he does his classwork and he's doing all the things he should, he'll get out of there whenever that process is complete. [LB242]

MARK DARBY: Uh-huh. [LB242]

SENATOR LATHROP: If he is disruptive or if he's beating the staff, that just means he's going to stay there longer. [LB242]

MARK DARBY: Well, there are some consequences on certain issues. We have a security unit that we send youth that get into trouble that are serious enough to warrant that, but we're also dictated about how long we can leave them there as well. [LB242]

SENATOR LATHROP: Okay. And Senator Coash is shaking his head, so maybe I'm missing something. If this kid is disruptive, if he hits somebody, he's going to stay longer. Does prosecuting him for hitting the person make him stay even longer than he would have or are we just going through the prosecution process and ultimately he's there till he figures it out and he behaves himself? [LB242]

MARK DARBY: All right. We don't have any length of stay requirement. We don't have any determination how long they can stay or we cannot impose a sentence upon them to require them to stay longer. In cases like we brought up about the escapes and the felony, there is a 90-day deferment attached with that when they do return to YRTC, but as to attaching a sentence to their stay, it's just an (inaudible) when they've completed the program is when they're allowed to leave. [LB242]

SENATOR MCGILL: Well, that sounds like a problem to me because their problem isn't necessarily solved if they just complete a program. [LB242]

MARK DARBY: It's a good program and it does work when they want to cooperate with... [LB242]

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SENATOR ASHFORD: It works with a bunch of them but not... [LB242]

SENATOR MCGILL: Well, yeah, I'm sure. I'm sure it works with the majority. [LB242]

MARK DARBY: With the majority, the majority. [LB242]

SENATOR MCGILL: But it seems there does need to be something else. [LB242]

SENATOR ASHFORD: Yeah. Yeah, there is. There's a...and we...we got to do something about this problem, yes. [LB242]

SENATOR MCGILL: They shouldn't just get to leave this because they've checked A, B, C, and D, and done. [LB242]

SENATOR ASHFORD: Yeah, you're right. There's something that needs to happen and I don't know what it is, but there's clearly something amiss here and whether it's...if they are sentenced to an adult crime, felony, they come back to Omaha; they're in a corrections facility, not in a juvenile facility or, you know, or a HHS facility, which is a different grade of punishment clearly. [LB242]

MARK DARBY: Sure. But as I had said, part of the problem that we're seeing is, if some of these youths that are familiar with somebody getting punched, knocked out, or hurt, they're seeing these other youth come back and they think it's okay. [LB242]

SENATOR ASHFORD: I get it. No, I...this is a different group and I just don't know what to do about it yet. (Laugh) So thanks, Mark. [LB242]

MARK DARBY: Very good. Thank you. [LB242]

SENATOR ASHFORD: (See also Exhibits 3 and 34) Any other opponents? [LB242]

CHRIS EICKHOLT: Good afternoon, Chairman Ashford, members of the committee. Chris Eickholt, E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are opposed to the bill. This is a different situation than you heard earlier today with respect to the bodily fluids bill, and that is in that instance perhaps something what not criminal. And some of the questions that the committee members are asking highlighted the problem that we have with this. What this bill would do is it would treat juveniles as adults when they're in the YRTC's, and it would expose them to felony prosecution for every sort of assault they could possibly be engaged in, and that is, in our opinion, the wrong balance. Juveniles are different. They're different agewise, they're different mentally-wise, and they act on a different sort of level and they ought to be treated differently. As Senator Council asked, if a juvenile under

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current law causes serious bodily injury, that's a Class II felony, first-degree assault. If they hit someone with a chair, that's second-degree assault, a Class III felony, along with the use of the weapon, the chair, a mandatory consecutive Class II felony. What this will do and it will impact and adversely affect juveniles even more than the regular population, it will make it a felony offense to commit third-degree assault. One of the ways you can commit third-degree assault is if you recklessly cause bodily injury to another person. And as a practical matter, anyone who's worked with at-risk kids know much of what they do is reckless. It could be something as minor as an elbow to the face of a staff worker while they're being separated during a fight they're having with another kid--and bam, they're a felon. That's different. [LB242]

SENATOR ASHFORD: Well, they'd have to be convicted first. [LB242]

CHRIS EICKHOLT: They'd have to be convicted, that's true. But it would give them... [LB242]

SENATOR ASHFORD: Usually we still do that but...don't we? (Laugh) [LB242]

CHRIS EICKHOLT: It would give them the exposure to be charged as a felon. And there's some issue about whether things are a deterrent or not. It is probably just a smaller percentage of the kids. In my observation, working with juveniles who are charged as adults, they're mad. They're mad. They're angry. They do not consider the consequences. When they're 16, 17, 18, like somebody said earlier, they think they're not going to be exposed to punishment. If they're going to be charged with a felony, they can do the time standing on their head. They have no concept of what they're being exposed to. [LB242]

SENATOR ASHFORD: Do you really think that? [LB242]

CHRIS EICKHOLT: I do. Because, for instance, somebody said earlier about felony is an escape. Kids run all the time now from the places. They know it's a felony but they run from the YRTC's, they run from the group homes, they run. [LB242]

SENATOR ASHFORD: Okay. [LB242]

CHRIS EICKHOLT: And the same logic like, well, they're not going to catch me, even though I'm not going to go anywhere, and even if they do, I can still beat it. That's just sort of the mentality. I do see that. And it's not every kid. Some kids do benefit from the system. The problem is this will treat them all as adults, it will expose them all. And if you look at the fiscal note, in the paragraph beginning with the word "discussion," they talk about the danger of exposing the kids to a third-degree assault as a felony for every assault. Not to disparage the staff, but the reality is that the relationship between the staff at the YRTC's is different than staff at the prisons and it's different than the police,

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citizen encounters. It's just a different nature. [LB242]

SENATOR ASHFORD: But isn't that the problem? I mean their relationship is different and they're working to rehabilitate these youth... [LB242]

CHRIS EICKHOLT: It is. [LB242]

SENATOR ASHFORD: ...and in a different kind of treatment plan, pursuant to a treatment plan, not a sentence, and that is a different deal. So they get, you know, they get badly injured. [LB242]

CHRIS EICKHOLT: Maybe something could be done internally as far as how they're sanctioned or whatever. [LB242]

SENATOR ASHFORD: I don't know the answer, but anyway, I interrupted you. Sorry. [LB242]

CHRIS EICKHOLT: That's fine. [LB242]

SENATOR ASHFORD: Thank you. Any other opponents? Neutral? [LB242]

AMY PRENDA: Chairman Ashford and members of the Judiciary Committee, my name is Amy Prenda. It's A-m-y P-r-e-n-d-a. Sheriff Davis was going to testify in a neutral capacity, and the only testimony that we have from the sheriffs is making it consistent with secured and staff-secured youth facilities, in addition to there's some discrepancy between Department of Correctional facilities but...employees when a jail or in a county detention facility aren't treated the same. So all we ask is, based on what public policy you move forward, you take into consideration matching what's happening at the state level with the county correctional facilities. And I'd be happy to answer any questions you have. [LB242]

SENATOR ASHFORD: Thanks, Amy. Senator Hadley. Interesting topic. [LB242]

SENATOR HADLEY: It is. I realize it's Friday afternoon and we all want to get home. And it's interesting, because I'm going to drive home to Kearney and I'm going to sit in my kitchen and probably have a cold one, and from my kitchen window I can see YRTC. It's across the field in my backyard. And I know a lot of people who work there. You know, you live in a town for 20 years, you know, you know the superintendent, you know the teachers, you know the psychologists, you know the people there. And there at times is a fear. And I worry at times that we spend a great deal of effort being concerned about the juvenile, which I think is important, but how about the people that work there? Is it different if somebody hits you in the face with an elbow when they're 16 years old in a YRTC versus hitting you with an elbow and breaking your nose in the

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prison? Does that mean your nose is more or less broken in one of the two places versus the other? Secondly, I think one of the keys to this bill is in...and I'm not a lawyer, is the Class III that is now a misdemeanor versus a felony. I think that's one of the keys to the bill. And if there is an appropriate explanation as to what the consequences of actions are, I think it can have a change in behavior. And I realize this is a difficult subject but it's an important subject. I haven't been here to see the others. I was here on the healthcare providers. But I think people at times have to be held responsible for their actions and it's up to us to determine whether this is a deterrent or not. And if it isn't a deterrent, we shouldn't, there's no reason to do it. But if it is a deterrent and it can stop some of the injuries, I am all for it. [LB242]

SENATOR ASHFORD: Thank you. And I agree, your employees that...your people from your area that do this work are...they do amazing work and they should not be subject to severe injury. But thanks for bringing the bill. [LB242]

SENATOR HADLEY: Okay. Thank you. [LB242]

SENATOR ASHFORD: Any other neutral testifiers? That concludes the hearing. [LB242]