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Judiciary Committee
February 25, 2011

[LB296 LB349 LB447 LB513]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 25, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB447, LB513, LB349, and LB296. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: Burke Harr.

SENATOR ASHFORD: (Recorder malfunction)...started, everyone. We're actually a bit late. Welcome to the members of the bar, fellow members of the bar.

SENATOR LATHROP: Do we have members of the bar here?

SENATOR ASHFORD: They are.

SENATOR COUNCIL: We have the Leadership Academy.

SENATOR ASHFORD: I would ask them to stand up but they don't want to do that so...

SENATOR COUNCIL: The Leadership Academy is back there.

SENATOR ASHFORD: The Leadership Academy is here. Welcome.

SENATOR LATHROP: Does that mean we're supposed to go over there to the Bar Association after this?

SENATOR COUNCIL: You were. No, (inaudible) I think they do have something afterward too.

SENATOR ASHFORD: Really? They could have gone jogging with me but it probably was a little cold.

SENATOR LATHROP: Okay.

SENATOR LAUTENBAUGH: Is it compulsory? (Laughter)

SENATOR ASHFORD: To go jogging with me? (Laugh) Well, welcome, everyone. Welcome, everyone, to the (laughter)...this is more fun. I'll bet everybody thought this was drudgery down here. It's actually a blast. Welcome to the Ernie Chambers Judiciary Committee Hearing Room. Let me introduce my colleagues today on the Judiciary Committee: Senator Scott Lautenbaugh from Blair over here; Senator Brenda Council, you all know Senator Council I'm sure from Omaha; Senator Amanda McGill from Lincoln; and the Vice Chair, Senator Steve Lathrop from Ralston; Stacey Conroy

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from...is our legal clerk; and Ollie VanDervoort is our committee clerk; and Matt and Tom are over there handling the coffee and all other matters. So today we have five bills. Senator Fulton has LB447.

STACEY CONROY: Only four.

SENATOR ASHFORD: Four bills, I'm sorry. Who's here to testify on LB447? Okay. How about LB513? LB349? And LB296? Oh, it's your bill. Absolutely. We have a light system. For those who have not been here before, we ask that you confine your testimony to three minutes. The yellow light will tell you when there's...when we'd ask you to sum up. And with that, Senator Fulton has one minute...no, sorry.

SENATOR FULTON: Not much love here, Mr. Chairman.

SENATOR ASHFORD: No, we don't confine the introducers to a time limit. But, Senator Fulton, would you like to introduce LB447?

SENATOR FULTON: I would.

SENATOR ASHFORD: And Senator Tyson Larson from O'Neill has just arrived, so okay.

SENATOR FULTON: Okay. Thank you, Mr. Chairman. Good afternoon, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29 here in Lincoln. I appear before you today to present LB447 for your consideration. This legislation was brought to me by the Lancaster County Board of Commissioners, which is in litigation right now over a chase that occurred and the chase subsequently had crossed into Seward County also. Lancaster County in that case has not shirked their responsibility to the victim. Indeed, recently they advanced \$75,000 to the plaintiff in that case to assist them with their expenses. This legislation is not about that case. It comes from the thoughtful consideration of that position. What that case did was to provide an opportunity to reflect on our existing policy. And this bill was brought to me and I agreed to bring it forward because I think it is an interesting piece of policy that I believe that the Legislature could make clearer, and that's why I'm bringing this forward. LB447 is a bookend to the issue of vehicular pursuit and the liability that political subdivisions incur when a police officer or a sheriff's deputy engages in pursuit of an individual or individuals. Put simply, this legislation would provide an end to the open liability that political subdivisions have when it comes to these pursuits. In consideration of this, I reviewed the Opinion of the Nebraska Supreme Court in the Staley v. City of Omaha case. In that case, the court specifically rejected any arguments that the pursuit that ended. The court stated that a law enforcement officer's decision and action to terminate a vehicular pursuit does not instantly eliminate the danger to innocent third parties. That danger continues until the motorist reasonably

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perceives that the pursuit has ended and has an opportunity to discontinue the hazardous, evasive driving behaviors contemplated in the statute. It is my intent to provide some clear direction to the court, to our municipalities and counties, and to the public that a pursuit has ended when that officer has made...when that pursuing officer has made the conscious decision to end the pursuit and taken actions to end the pursuit. These actions could perhaps include stopping the cruiser, turning off the cruiser's lights, making an announcement to those being pursued that the officer or deputy is ending the pursuit. I've tried specifically to leave that discretion to the courts in making that decision. It is, in my opinion, good public policy to put forward this statute because it encourages a police officer or sheriff's deputy to end a pursuit which has...which may have become dangerous. In closing, I think it's important to remember that in many cases it's the laws passed by this Legislature that law enforcement personnel are enforcing when a pursuit begins. In many cases, it's the innocent bystander who is the victim, who's the victim and who is typically injured. It's not my intent to bar these innocent victims from recovery. Rather, it's my hope that we can strike a balance between those injured and the legitimate need for local political subdivisions to have some measure of knowing when one of these pursuits has ended. So, a pretty straightforward bill. Like I said, I brought it forward because it's an interesting philosophical question I think is worthy of our attention, and I ask you to give your consideration to LB447. Take any questions if indeed there are any. [LB447]

SENATOR ASHFORD: Thanks, Tony. Any questions of Tony? Senator Council. [LB447]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thank you, Senator Fulton. I thank you, although you know my position on vehicular pursuit. And I guess I'm not familiar with the case and whether or not the issue presented had to deal with the current language of the statute which defines a vehicular pursuit as an active attempt. And is that what...I mean did the court not view the discontinuation to no longer be an active attempt? [LB447]

SENATOR FULTON: Active attempt, I'm not positive if I'm being accurate in responding affirmatively but I believe so. I did, I anticipated a type of question like this and there was a reference to the statute made, and I'm going to try to...I think this is it. Let's see, okay, this is from the case: A law enforcement officer's decision and action to terminate a vehicular pursuit do not instantaneously eliminate the danger to innocent third parties contemplated in statute 13-911. That danger continues until the motorist reasonably perceives that the pursuit has ended and has an opportunity to discontinue the hazardous, evasive driving behaviors, which I cited that in my testimony. [LB447]

SENATOR COUNCIL: Okay. And what is it...what is the thought that if the language that is proposed would not present the same issue, I mean because what you read, that if the officer makes a conscious decision and ceases the pursuit there's no, and what I

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heard the court saying, there's no instantaneous response from the person being pursued? And, you know, perhaps this is a question for Mr. Mumgaard or others who I'm sure will be testifying in support, but what is it about this language that gives cause to believe that that circumstance would change, because what you just read for me from the court's decision had to do with the timing of the ending of a pursuit and when some injury is caused to an innocent third party? And I'm just questioning what is it about this language that is believed to mean that regardless of how long it takes the person being pursued to recognize that they're no longer being pursued, that this language would somehow limit municipalities' and local subdivisions' liability. [LB447]

SENATOR FULTON: Well, the...this is my own response. There could be some jurisprudence. There could be a precedent in place that someone else can respond to afterward. But just looking at this philosophically, there are two volitions at work here--he who is being pursued and he who is pursuing. And as this...as I read through this decision, it seems clear to me that the end of the pursuit, without making any change in the statute, this decision, it seems to me that the end of the pursuit is at the volition of the pursued, whereas if we were to implement my language it would be at the volition of the pursuer. And I think that that's good policy because these...well, first of all, I mean, it's an employee of the citizens of that locale, county or municipality, but also these individuals are the ones who are trained in such things and pursued. And so that's...therein lies the difference, I think, between what exists now and what I'm proposing, is that by who's volition shall we decide that the pursuit has ended? [LB447]

SENATOR COUNCIL: Okay. Thank you. [LB447]

SENATOR ASHFORD: Maybe you asked but active, if they're actively attempting but may have consciously decided to not do that, not to actively attempt, they're still actively attempting. [LB447]

SENATOR FULTON: Well, there's a line, "and taken action to terminate the pursuit." [LB447]

SENATOR ASHFORD: Right, but I'm saying it seems to me that if they're taking action to terminate pursuit then they're not actively attempting to pursue. [LB447]

SENATOR COUNCIL: Attempting, that's my point. They're not. And what... [LB447]

SENATOR ASHFORD: I mean it seems like you already got it, but anyway, I'm sorry if I was asking a redundant question. [LB447]

SENATOR COUNCIL: No, but I think the point is that the bill is attempting to get to and it is reflected in the court's language there, is that if I decide I'm going to stop and I'm going to stop chasing this person, there's no immediate transmission of that to the

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person being pursued. Okay, they're still trying to elude. And I don't know what the facts are of this case. I don't know if seconds after the officer turned their lights off and turned the corner, seconds after the injury was caused, but I think that's...that's what I heard the court say. And maybe someone, maybe Mr. Mumgaard can enlighten me further, but I think that that's what the...I think it becomes a proximate cause issue and I don't know that this language changes...would alter that. Thank you. [LB447]

SENATOR FULTON: Yeah. I understand what you're saying. [LB447]

SENATOR ASHFORD: Thanks, Tony. Thanks. Are you going to stick around? You're going to stay or leave? [LB447]

SENATOR FULTON: I will, yeah. [LB447]

SENATOR ASHFORD: Proponents? [LB447]

THOMAS FOX: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Thomas Fox. I am a deputy Lancaster County Attorney. I'm here on behalf of Lancaster County to speak in support of LB447. The addition to the definition of vehicular pursuit that would be provided by LB447 is good public policy and may reduce vehicle pursuits and may avoid accidents caused by the pursuits. Under the current definition of vehicular pursuit, there is no explanation of when the active attempt by law enforcement to apprehend an occupant of another vehicle stops. Once an officer has begun a pursuit or made an active attempt to apprehend, they have crossed a major liability threshold. Therefore, there is less incentive for the officer to call off the pursuit because the officer's conscious decision or actions to terminate a pursuit might make little difference regarding liability. The change made by LB447 makes the officer's conscious decision and actions to terminate a pursuit matter regarding liability. This change could result in officers taking active steps to terminate pursuits earlier, thus reducing the need for the other motor vehicle to flee, limiting the liability of the political subdivisions and state and avoiding the vehicle pursuit accidents that we all seek to avoid. That's the extent of my comments. If you have any questions, I'd be happy to answer any questions. [LB447]

SENATOR ASHFORD: Thanks, Thomas. I don't see any. Thank you. Next proponent? [LB447]

DON YOUNG: Afternoon, Senators. My name is Don Young. I'm a captain with the Lancaster County Sheriff's Office, representing the Lancaster County Sheriff's Office in favor of LB447. I've been with the sheriff's office for 16 years, captain of the Patrol Division for 5. As a deputy, I was personally involved in many pursuits during my tenure on the road, and as captain of the Patrol Division I have the direct responsibility of reviewing and evaluating each and every pursuit that my deputies become involved in.

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I'm very proud to say that our deputies use great discretion when pursuing other vehicles and I believe that such discretion allows vehicle pursuits to be a very valuable tool available to law enforcement. The language being proposed in LB447 is nothing more than a reflection of the policies and procedures that the Lancaster County Sheriff's Office has been teaching in training for years. Each year every deputy not only undergoes training that stresses the importance and understanding of the vehicle pursuit policy, as required in state statute, but we actually complete mandatory driver's training in nonemergency and emergency situations to ensure that deputies are able to satisfactorily handle themselves and their vehicles in the event of a vehicle pursuit. The conscious decision referred to in LB447...in the LB447 revision leaves nothing to judgment. All of our deputies are taught that when they or their supervisor decide to terminate a pursuit they stop immediately, pull to the side of the road, and deactivate any emergency lighting. When safety allows, they then exit the cruiser and step in front of the camera to document their nonparticipation, or they immediately turn around and drive in the opposite direction. During this time, the deputy articulates each and every one of his actions on the in-car microphone and camera. Either way, there can be no mistaking the time of termination of the pursuit and the conscious decision of the deputy to discontinue the process. [LB447]

SENATOR ASHFORD: Any questions of Captain Young? Yes, Senator Lathrop. [LB447]

SENATOR LATHROP: Captain, thank you, and I appreciate the procedures and the policies that you have, and I'm thinking back to a case. It seems like I read one, a reported case from Omaha where law enforcement is chasing some guy and he goes over a hill and they stop on this side of the hill and the guy doesn't know it. He still thinks he's being pursued and then gets in a crash. I mean that really is kind of the distinction that we're trying to draw today, which is, is it about what the guy who's running thinks or is it about what the law enforcement person thinks? [LB447]

DON YOUNG: Well, I think that case is probably one of the more rare cases that you're going to have, but at some point you're going to need to draw... [LB447]

SENATOR LATHROP: But I think that's what we're talking about, isn't it? [LB447]

DON YOUNG: Well, I think...I'm sure it is. In listening to Senator Fulton, it certainly sounds like that's what we're trying to draw, but in most cases it's very obvious to the "pursuee" because he's constantly looking. We've talked to "pursuees." [LB447]

SENATOR LATHROP: Well, if it's obvious to the "pursuee," is there liability imposed in that situation when the "pursuee" knows that he's no longer being chased? [LB447]

DON YOUNG: Well, at this point the "pursuee" can always say that he thought he still

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was being chased. [LB447]

SENATOR LATHROP: But that presumes that he's trying to help somebody out, right? He doesn't have a dog in the fight. It's between the city of Omaha or the city or the county or the State Patrol, for that matter, and the person that got hurt. [LB447]

DON YOUNG: Yeah. [LB447]

SENATOR LATHROP: Right? [LB447]

DON YOUNG: It is. [LB447]

SENATOR LATHROP: Okay. [LB447]

DON YOUNG: But his dog in the fight is financial liability. His dog in the fight is... [LB447]

SENATOR LATHROP: If he had the ability to pay, no one would be pursuing the city. (Laughter) [LB447]

DON YOUNG: Well, but, you know, we don't know that when we're pursuing them. We're not doing it for that reason. [LB447]

SENATOR LATHROP: Right. Okay. Thank you. [LB447]

SENATOR ASHFORD: Yeah, and my only comment, when we had this bill many times when I was here in the '80s and obviously when it was...there were efforts to repeal this many times, and what has happened is exactly what we thought would happen, what you've done, and that is create a program of training which has effectively reduced injury as a result of police chases. I mean it has, in effect, worked because what you're doing is exactly what we hoped would be done and it has been done, both in Lincoln, Lancaster County, and Omaha, and Douglas County. So again, we can debate the language but the public policy of this bill I think has borne fruit because...decisions have borne fruit because you are doing the kind of training that results in a safer situation. So I applaud you for that. Thanks, Captain. [LB447]

DON YOUNG: Thank you. [LB447]

SENATOR ASHFORD: Next proponent? [LB447]

TOM MUMGAARD: Good afternoon. My name is Tom Mumgaard, that's T-o-m M-u-m-g-a-a-r-d, a deputy city attorney for the city of Omaha. I'm the lawyer that tried the McGrath and Staley case that's been mentioned here that led to the decision we're

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talking about. Generally in that case, it was a proximate cause issue. There was a pursuit. It wasn't a question about whether there was an affirmative act to pursue. The pursuit reached a point where the officers felt it wasn't smart to continue on, so the officer terminated. He flat out stopped. He then continued to meander through the neighborhood looking for the guy but he had lost him. The fleeing had continued on, started zigzagging through the neighborhood. He was over a half-mile away from the officer, almost a minute had elapsed before there was the collision. It was a situation where he went over the hill and it was very clear for about a two-block stretch there was no longer any police car behind him, he was not being pursued. He had the collision. We argued that the causation had been broken and that the test should be the reasonable expectations of the officer after he terminates the pursuit. Supreme Court said, oh no, you flip it on its head and you leave it up to the crazy fleeing person; it's the reasonable conclusions of the crazy fleeing person. If they don't have reason to believe that the officer is not pursuing them then you still have the causation. What that means in this kind of a situation where there's the zigzagging is that the crazy fleeing person is always reasonable to believe that the cruiser is back behind the last corner he went around. That could continue on for many, many...for quite some time. As we tried to tell the Supreme Court, you could end up with the guy fleeing all the way to Chicago and the pursuit liability would never end. The Supreme Court said, well, no, it's got to be the reasonable expectations of the fleeing person. We presented evidence that if you turn it the other way around, evidence from objective national standards, that when the pursuit is terminated the "offendee," the fleeing person, is likely to stop or slow down within 2.2 blocks in an urban area. So what this should do is turn it around and focus on what is the reasonable expectation of the pursuing police officer as to what's going to happen after he stops the pursuit. The language could be better and focus more on a proximate cause issue, but the concept is certainly valid. The city of Omaha supports LB447. [LB447]

SENATOR ASHFORD: Senator Council. [LB447]

SENATOR COUNCIL: Thank you. And thank you, Mr. Mumgaard. And I think you kind of made the point that I was trying to make, the concern is, okay the court said it's the reasonable expectation of the fleeing person... [LB447]

TOM MUMGAARD: Correct. [LB447]

SENATOR COUNCIL: ...that they were focusing in on. [LB447]

TOM MUMGAARD: Correct. [LB447]

SENATOR COUNCIL: And my question is, what is it about this language that alters that? I mean you can still say, you can still say, well, by virtue of this language there is no longer an active attempt, okay? But how do you eliminate the possibility and likely

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the probability that the Supreme Court would say, well, fine, that he, the officer, terminated but it's still the reasonable expectation of the fleeing person that's going to govern? And I would...you'd have a stronger argument with just vehicular pursuit means an active attempt. [LB447]

TOM MUMGAARD: Okay. I'm going to agree with you that there's two things that we're looking at here. Is there a pursuit going on? And then, if there was a pursuit, what is the causation thereon? This language does focus more on the question of is there a pursuit going on. It's very helpful to define when that pursuit is or is not occurring. So far the case law has focused on that, yeah, that term active attempt. If you had stopped your active...first off, if you never begin an active attempt, that's the following situation, you're not in pursuit. If you pursue but then you stop your active attempt, you're no longer in pursuit. That's a factual question that certainly this language helps clarify. I think that, yes, you're correct that it could go further and we could have some better language here focusing on the causation. Once this pursuit has stopped then how long does causation continue? And our proposal would be that that language should be focusing, as Senator Fulton said, on the expectations and conduct of the officer rather than that of the fleeing person because that's really what the law enforcement agency has some control over and what you can really affect through the law and, therefore, somebody like the city of Omaha can have more certainty and control about their liability exposure. [LB447]

SENATOR COUNCIL: Okay. Not let's...Mr. Mumgaard, an officer initiates a chase and that officer is chasing somebody that has been tearing through neighborhoods at 80 miles an hour, driving over mailboxes, jumping curbs, and they stop and you're suggesting to me that that officer would have a reasonable expectation that that fleeing person is going to stop exceeding speed limits and engaging in evasive conduct? [LB447]

TOM MUMGAARD: Well, what I can tell you is in that McGrath and Staley case, we presented the testimony of an expert, a nationally recognized criminal justice expert, who, in fact, has testified years ago in front of this committee, who had done a study of people who were engaged in...had engaged in flight from police and that study showed that once that person was aware that the pursuit...that the police were no longer after them, that they on average became safe again and drove generally within the speed limit, etcetera, within 2.2 blocks in an urban area. And we said, okay, you can take that kind of objective, empirical evidence, translate that into a reasonable expectation of what's going to happen after the pursuit ends, and that's the causation breakage. [LB447]

SENATOR COUNCIL: Okay. But you still have this subjective "once that person becomes aware." Now the assumption is that once they look in their rearview mirror and don't see, you know, the flashing lights and see the officer pulled over to the curb, that they know the pursuit has ended. [LB447]

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TOM MUMGAARD: Well, you know, in the zigzag situation that we encountered in McGrath, Staley, it gives you difficulty with that. And that creates so much uncertainty that I don't think you can use the "when that person becomes aware." You have to go with something such as what Senator Fulton has here, as once it's been terminated and you're no longer chasing the guy, there has to be some defining moment then when the liability stops. Otherwise, in those zigzag situations, you could go on for a long, long time. Yeah, so I agree with you that using that term "when that person becomes aware," as the Supreme Court said, should reasonably know there's no longer a pursuit, that creates factual situations that just could go on forever. [LB447]

SENATOR COUNCIL: Yeah, and all I'm suggesting to you, Mr. Mumgaard, is you don't avoid that with the language of LB447. [LB447]

TOM MUMGAARD: I think this language goes partway there but, yes, you should go the rest of the way and talk about proximate cause. [LB447]

SENATOR COUNCIL: Thank you. [LB447]

SENATOR ASHFORD: And that's what I'm going to suggest. I don't think this language gets you there. The word "active" was put into the...I recall that debate very well and you were here, and you do a great job explaining it, but "active" was put in the statute in order to address the situation you're talking about, and it may very well need to be clarified but that doesn't clarify it. [LB447]

TOM MUMGAARD: Yeah. Well, don't play the word "active." You did a good job. That was (laughter)...that has been very helpful. [LB447]

SENATOR LATHROP: We could take it out. (Laughter) [LB447]

SENATOR ASHFORD: We can take it out. [LB447]

TOM MUMGAARD: No, don't play with that. The case law... [LB447]

SENATOR ASHFORD: But I think all I'm saying is it's a redundant...I just think you need to clarify it. I get what you're after and I just don't know if that gets you there. [LB447]

TOM MUMGAARD: Well, I think it's helpful to define when a pursuit ends and, you know, linking this to the active attempt would be helpful. [LB447]

SENATOR ASHFORD: Well, not pursuing anymore is when it ends. [LB447]

TOM MUMGAARD: It's kind of one of those things that everybody knows it when they

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see it; how do you describe it? [LB447]

SENATOR ASHFORD: That's what, yeah. No, I get it and you obviously have had a lot of experience in this area. Thanks. Thanks, Tom. Any...yes, Senator Lathrop. [LB447]

SENATOR LATHROP: Just briefly, if I understand, what you're saying is it should be when the officer thinks it ends instead of when the person thinks it ends. [LB447]

TOM MUMGAARD: Well, I wouldn't put it all on when the officer thinks it ends. He may be wrong. I would say that, yeah, you need some objective criteria to determine when the pursuit ended, when he quit. [LB447]

SENATOR LATHROP: But, Tom,... [LB447]

TOM MUMGAARD: And then you go...his expectations thereafter. [LB447]

SENATOR LATHROP: Yeah. Here's the thing that strikes me while I'm listening to your testimony and that is if you're looking for objective evidence and what the expert that you brought in testified to is that two and a half blocks, on average, two and a half blocks from the end of a pursuit the guy will be down to the speed limit and obeying the law, right? So isn't that the best evidence of when the pursuit ends? And it should be only a matter of two blocks. [LB447]

TOM MUMGAARD: Well, if you want to... [LB447]

SENATOR LATHROP: So the guy is getting chased,... [LB447]

TOM MUMGAARD: ...if you wanted to write in two blocks... [LB447]

SENATOR LATHROP: ...the guy is getting chased, he looks in his rearview mirror and the police is gone and, on average, that's two and a half blocks, and now he's down to obeying the speed limit in whatever neighborhood he's driving through. Wouldn't that be the best objective evidence over when this guy is not causing the danger because he's being chased? [LB447]

TOM MUMGAARD: Yes, and if you wanted to write a statute saying that liability only extends for 2.2 blocks or 2 or 3 blocks after the termination... [LB447]

SENATOR LATHROP: You were the one that said that's the average. [LB447]

TOM MUMGAARD: Well, that's what the study found. In an urban area, people who flee very quickly stop fleeing and become safer drivers once the pursuit has ended. So that's...I'm saying, well, that's what the law enforcement officer, the police can expect.

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So he should...his expectations should give...be given some credence in the law. Right now it's not. [LB447]

SENATOR LATHROP: But we could flip that around and say that if a person is back to the speed limit, he knows they're not being pursued, we don't have a pursuit and there's no liability, and that typically would be two blocks after the officer subjectively stops pursuing. [LB447]

TOM MUMGAARD: Well, I don't think you can draw that conclusion necessarily because a flight can continue at the speed limit. We've seen case law like that. [LB447]

SENATOR LATHROP: Okay. Yeah, I guess I'm presuming that the police chase is always done at a high speed and you're telling me it can done within the speed limit and still create liability. [LB447]

TOM MUMGAARD: Yes, I think it could. [LB447]

SENATOR LATHROP: Okay. [LB447]

SENATOR ASHFORD: Thanks, Tom. [LB447]

TOM MUMGAARD: Thank you. [LB447]

SENATOR ASHFORD: Any other proponents? I wonder if the evidence went in on that study, on that case. [LB447]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB447. This bill and the police pursuit policy of the state affects all law enforcement agencies across the state. Police departments do have policies on pursuit, when to pursue, when to continue, when to stop, and I think there does need to be a clarification of when pursuit does stop to reinforce those policies so that when the officer does decide, yes, under the policy I need to stop this for the protection of the public, that is reinforced. There are departments who may have a quiet policy, I wouldn't even mention any names, who do not pursue anymore under any circumstances, but most of them or all of them do have policies and all of them are very aware of the consequences. So they do have strict policies on when to stop pursuits. [LB447]

SENATOR ASHFORD: Senator Lathrop. [LB447]

SENATOR LATHROP: Really? Here's a question for you. Do they get their man in the end? [LB447]

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GARY KRUMLAND: It's... [LB447]

SENATOR LATHROP: Those people, those agencies that have a policy against pursuing, and I understand they quietly say don't do any pursuits because we don't want the liability, they get a license number. Do they catch as many people as the guys that are doing the pursuing? [LB447]

GARY KRUMLAND: I don't have information on that. [LB447]

SENATOR LATHROP: Okay. [LB447]

SENATOR MCGILL: That's a good question. [LB447]

GARY KRUMLAND: But they have...at least I know of one who has adopted that policy. [LB447]

SENATOR LATHROP: Okay. And you don't know that they're having any more trouble or less trouble getting the bad guys? [LB447]

GARY KRUMLAND: No, I just don't have the information on that. Yeah. [LB447]

SENATOR LATHROP: Okay. Thank you. [LB447]

SENATOR ASHFORD: Who adopted that policy? (Laughter) [LB447]

SENATOR LATHROP: Yeah, you don't want to answer that. [LB447]

GARY KRUMLAND: Yeah, I... [LB447]

SENATOR MCGILL: No. [LB447]

SENATOR ASHFORD: Is it a stated policy or is it a... [LB447]

GARY KRUMLAND: It's a policy that the department or the officers follow but... [LB447]

SENATOR ASHFORD: It's not in the reg or in their policies. [LB447]

GARY KRUMLAND: No. [LB447]

SENATOR ASHFORD: It's just they don't. [LB447]

GARY KRUMLAND: Yeah. [LB447]

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SENATOR ASHFORD: I mean the information we've had over the years is that the pursuits do result in arrests, not in every case, and that there hasn't been a significant downturn in the number of arrests, that's the data that I've seen over the years, and they tend to be safer, but maybe there's data otherwise. [LB447]

GARY KRUMLAND: And I don't have that on that. I think they weighed... [LB447]

SENATOR ASHFORD: All I know is we have safer... [LB447]

GARY KRUMLAND: ...they weighed the risks versus that and they decided it was not worth... [LB447]

SENATOR ASHFORD: Yeah. I just...I mean I think we have a safer environment because of this but basically because of the professional nature of our law enforcement people who know what they're doing. [LB447]

GARY KRUMLAND: Uh-huh. [LB447]

SENATOR ASHFORD: Okay. Thanks, Gary. [LB447]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, my name is Elaine Menzel, M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials. And rather than be repetitive, I'll just express that we're here for the Political Subdivisions Tort Claims Act part of the bill and we are in support of it. Issues related to vehicular pursuit, as Senator Ashford acknowledged, have been before this legislative body for a number of years and the courts. This language would help clarify when vehicular pursuits are ended. And I would certainly defer to the practitioners and to the committee as to the appropriate language for addressing these issues. If there are any questions, I will attempt to answer them. [LB447]

SENATOR ASHFORD: Thanks, Elaine, as always. Any other proponents? [LB447]

RICHARD LALLY: Good afternoon. My name is Richard Lally. I'm a lieutenant with the Douglas County Sheriff's Office. And like the person before me, for brevity I'd just like to say the Douglas County Sheriff's Office is in favor of LB447. Much like Lancaster, we do do the statutorily every year, we go over our pursuit policy, we review it. We also do a monthly and we always go over how you terminate a pursuit. You use the word "terminate" or "terminated." You actively...you shut down all your equipment that you've been using and then you turn around immediately to go see your supervisor and discuss it. We just believe that it would take out any ambiguity as to when a pursuit has ended. [LB447]

SENATOR ASHFORD: Thanks, Richard. Yes, Senator Council. [LB447]

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SENATOR COUNCIL: Is it Wiley? [LB447]

RICHARD LALLY: Lally, L-a-l-l-y. [LB447]

SENATOR COUNCIL: Since the implementation of your chase policy and officers, operating in accordance with that, make a determination to shut down a chase, do you have any data or any information to indicate to you that your policy is working, i.e., you don't see people continuing to flee at high rates of speed or engaging in dangerous, evasive action. Do you have any kind of indication that what you're...when you're stopping chases that the people who are fleeing then begin to conduct themselves in a less dangerous manner? [LB447]

RICHARD LALLY: I don't know if I'm going to answer your question. I'm on our pursuit review committee and we just had this meeting earlier this week, and I think what shows that this works is...or what would help us is that we haven't had any accidents. We haven't had any people. Soon as we shut down, I would say the evidence is that no one has gone on to get in an accident or cause any innocent third-party injuries, and I do believe it's because, I mean, if it was to happen, you know, when you pull over and you're actively...you shut down all your lights and you're not actively pursuing and someone does go down the road and hurts somebody, you know, you can show that we weren't pursuing them anymore. And I understand the argument now which I never saw the other side of it as it's what's in the person's mind, but it just seems to make sense that if we are shutting down all active attempts then, you know, we should be out of the liability. [LB447]

SENATOR COUNCIL: Okay. Well, I was just asking that question in the context of the line of questions that Senator Lathrop was asking Mr. Mumgaard. He talked about this study that said that, you know, once the person realizes that they're no longer being chased that within a couple of blocks they resumed driving at normal speeds in compliance with all traffic laws. And I was just wondering if you had, you know, if based upon how your policy has been implemented, whether you had any information that would either affirm or refute the study results that say people then slow down to normal speeds after two and a half blocks. [LB447]

RICHARD LALLY: I would just say it's evidenced by the fact that we haven't had anyone go down the road and get in an accident. I can only make an assumption that they're backing off and driving normal. [LB447]

SENATOR COUNCIL: Okay. That's fair. Thank you. [LB447]

SENATOR ASHFORD: And, Richard, just following up a little bit with Senator Lathrop's questions, you do, you have a safe record. Douglas County has an excellent record.

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And you tell me, has public safety suffered since you've implemented those policies, in your opinion? [LB447]

RICHARD LALLY: No, we haven't. Matter of fact, the pursuits that we've had haven't been for any, you know, actively aggressive crime... [LB447]

SENATOR ASHFORD: So... [LB447]

RICHARD LALLY: ...or anything like that, so no. [LB447]

SENATOR ASHFORD: So all in all, okay, I get it. Thanks. Thanks, Richard. Do we have any other proponents? Opponents? Ed, are you... [LB447]

ED FOGARTY: I'm here. I'm here... [LB447]

SENATOR ASHFORD: ...back? Good to see you again. [LB447]

ED FOGARTY: ...as an opponent, Senator. [LB447]

SENATOR ASHFORD: I know you've been involved in this issue for a while. [LB447]

ED FOGARTY: I'd had a few of these. My name is Ed Fogarty, I'm an attorney in Omaha, and that F-o-g-a-r-t-y, and I had a little background in this statute. I think I had the first one that went to the Supreme Court. It was Stewart v. City in which they firmed up and defined what an innocent person was. And then I had some others and then I had the Staley case that seems to have brought about this proposed change in the language, and I'm worried about it. I'm extremely worried about it because, well, it just reads vehicle pursuit will be considered ended when a law enforcement officer has made a conscious decision to take action to terminate the pursuit. I would disagree with you, Senator Council. Maybe it doesn't change the lay of the land right now but I think it has the elements of destroying the whole strict liability concept we have through the back door of proximate causation by turning proximate causation upside down on its head. These judges are the fact finders. Our great judiciary here in this state are the fact finders. They know proximate causation backwards and forwards. They know substantial contributing factor to causation backwards and forwards. And they have done a fairly careful, and from a plaintiff's point of view I would say too careful and too tight and limited, analysis on proximate causation. In the particular case we had of Mr. Staley, who suffered \$3.5 million worth of damages, terrible burns all over his body, he looks like a crocodile now, and he recovered \$1 million because of the cap, what we had was a typical police chase. And watch out on this if anybody tries to tell you that two blocks is a good way to start limiting the issue of proximate cause. That's for judges and they'll look at a myriad of cases. In this particular one, Jimmie was riding down on 65th Street coming home late and up on 69th Street this chase was going on and the police

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officer who was chasing said he stopped at...whether on Blondo Street up 69th. Fleeing people went up a couple blocks and went on another half-mile. But that was a car full of drunken young kids. They were scared to death. One or two of them had warrants and they were prey of the police, and the policeman was a hunter. And what does that do in the mind of the fleeing party? It creates adrenaline, just the way there was adrenaline with the police. And I will compliment all of these officers and lawyers for the police side of this. They've done a heck of good job restraining what they as the hunter can do and really limiting what they do. But nonetheless, in this... [LB447]

SENATOR ASHFORD: Ed, let me just stop you. Let me stop you, because the red light is on, and ask you a question. [LB447]

ED FOGARTY: Yes. [LB447]

SENATOR ASHFORD: What happened next? (Laughter) [LB447]

ED FOGARTY: What happened next at 65th and Grant or something like that, Jimmie's pickup got split in half, he and his partner got burnt because that fleeing car went down a long hill, about a half-mile hill, at about 70 miles an hour fleeing, fleeing. Now if I may point out on how it was tried, we had Kuchel, this fellow from UNO. He was a cop from the beginning and then he was a professor and he worked with the city of Omaha on designing their protocols. He said, and this isn't nuclear physics, this is what you all know, it's an adrenaline-charged situation and you don't know, when you put the bullet in motion of the fleeing person, how far they're going to go. Sure, maybe 80 percent stop in two blocks, maybe 20 percent stop in a half-mile. And I never heard anybody so far say anything about the public policy here. I don't think the public policy was ever meant to protect municipalities in the state from having to spend a little money. It was meant to make them be safe when they did it. And they... [LB447]

SENATOR ASHFORD: Well, it was meant to make them safe. That's why the bill was passed. [LB447]

ED FOGARTY: And the innocent person is meant, if the police have to do it, one innocent person isn't going to give his life or limb. [LB447]

SENATOR ASHFORD: Let me go to questions, and I don't know if there will be any questions or if you...Senator Council. [LB447]

SENATOR COUNCIL: Yes. Thank you, Mr. Fogarty, and you know how we love to joust. (Laughter) So again, help me understand what it is about the...and if I haven't made it clear, you know, I don't support the addition of the language that's reflected in LB447. But tell me what it is about the language. I'm of the opinion that you don't need this language to get to what was articulated as the concern, because the statute already

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says "an active attempt." [LB447]

ED FOGARTY: Yes. [LB447]

SENATOR COUNCIL: So if the, you know, if the officer is not actively attempting to take the person in custody or stop them, if he's actually stopped, then they're not actively...there's no active attempt. So but tell me what it is about the addition of this language that you think would change the landscape in terms of proximate cause, because I'm sure that law enforcement takes the position now, as Mr. Mumgaard stated in the case he referred to, their argument was the officer had stopped the pursuit but the court still found liability there. So what is it about the addition of this language you think that would alter that landscape? [LB447]

ED FOGARTY: It would invite the courts, who I'm going to tell you are very conservative and basically antichase, in fact finding, and all the cases will show you how well Tom Mumgaard and others like that are kind of getting very tight little decisions on them. This will easily be conflated with, in argument, in presentation by the ones defending the chase with the proximate cause. And they will say, see, here is a sharp (inaudible) and you really cannot listen to much of this. Then they'll bring this fellow from South Carolina and they say, oh yes, 2.1 blocks everybody is supposed to stop. Drunken kids at 1:00 in the morning with three warrants in the car? Uh-uh. It's up to every judge to listen to every specific set of facts and make their own judgment on proximate cause. This is a wedge into and I think undermining the well settled concepts of proximate cause. You use it. You pass it. And I know next time I see Tom Mumgaard he's going to be telling some judge, see what the legislator meant? They meant that proximate cause is by public policy limited to 2.2 blocks. Believe me, nothing is wrong with the way this system is working. [LB447]

SENATOR ASHFORD: Well, he's a good lawyer and he's going to use what... [LB447]

ED FOGARTY: Oh, I know he is. [LB447]

SENATOR ASHFORD: ...what he can. [LB447]

SENATOR LATHROP: Crafty. Crafty. [LB447]

SENATOR COUNCIL: That's all, Mr. Chair. [LB447]

ED FOGARTY: (Laugh) Straightforward and honest. [LB447]

SENATOR LATHROP: That would be really uncomfortable for me. [LB447]

ED FOGARTY: No, that's my fear, is that it...we're doing a good job, police are doing a

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good job in tightening up procedures, this is going to only hurt the innocent party.
[LB447]

SENATOR COUNCIL: Thank you. [LB447]

SENATOR ASHFORD: Thanks, Ed. Any other opponents? Do we have neutral testifiers here today on this bill? Okay. I think this will be the last testifier and then we'll move to Senator Christensen, who's here. [LB447]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I am against LB447. I do not believe there is any reason to pursue anyone at any time. A pursuit endangers all citizens. This bill is designed to protect taxpayers from paying for an unlawful act. Taxpayers are now off the hook for anything over \$1 million due to tax...state law. This bill will put...taxpayers will be off the hook for any damages. This law says anybody damaged should have stayed at home. We pay for the police by taxpayers' money and then they also should be paid, anybody damaged by a pursuit. Thank you. [LB447]

SENATOR ASHFORD: Any questions? Thank you. Senator Fulton. [LB447]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. What makes this a little scary for taxpayers and, well, scary for me is that we have some liability based on what's in the fleeing person's mind, and, Senator Council, you nailed it. If the officer stops the pursuit, what is it in this language which communicates that by some epistemology this person who's fleeing knows that the pursuit has ended. That's the crux of your question. I'm going to, just in reflecting or looking at the language that exists now in the statute, I'm going to give a recommendation that perhaps could be used as an amendment. We have in the...you can read this if you want in the green copy of the bill, page 4, line 11, okay, so "an active attempt by a law enforcement officer operating a motor vehicle to apprehend one or more occupants of another motor vehicle when the driver of the fleeing vehicle is or should be aware of such attempt." I wonder if we couldn't take that language and utilize it at the end of what I am proposing underlined here: when the law enforcement officer has made a conscious decision and taken action to terminate pursuit such that the fleeing vehicle is or should be aware that such pursuit has ended. Now that's a little bit...it's better than what we have in place now but it at least addresses the epistemology question that you're bringing forward, Senator Council, whether this person is indeed aware that such a pursuit has ended. We have some precedent in existing statute, he or she should be aware that he's being pursued in the beginning, so perhaps we could utilize that language at the end. So I come with a suggestion in my closing. Thank you, Mr. Chairman. [LB447]

SENATOR ASHFORD: Thanks, Senator Fulton. Yes, Senator Council. [LB447]

SENATOR COUNCIL: Just one point for clarification, and maybe I misunderstood you,

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Senator Fulton. You didn't state that I thought or stated that I believe that the fleeing suspect is considering liability. [LB447]

SENATOR FULTON: No. [LB447]

SENATOR COUNCIL: Okay. Thanks. (Laughter) [LB447]

SENATOR FULTON: That would be quite a fleeing suspect. [LB447]

SENATOR COUNCIL: I wouldn't...I don't want...believe me, they're not thinking about that at all. Apprehension. [LB447]

SENATOR ASHFORD: Thanks, Senator Fulton. [LB447]

SENATOR FULTON: Thank you. [LB447]

SENATOR ASHFORD: Thanks. Senator Christensen, LB513. [LB447]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. LB513 adopts the Escort Services Accountability and Permit Act. This act defines escort and creates a permit structure for escort agencies and their employees to implement...to be implemented by local governing bodies of counties, cities, and villages only when the local governing body has received a request from a person wanting to operate an escort agency within their jurisdiction. The overarching purpose of this act is to provide for the protection of the economic and social welfare and health, welfare, and safety of the people of this state. In this context, LB513 seeks to bring accountability to the escort and private erotic industry...entertainment industry, lessening the negative secondary effects such businesses cause in communities across the state. In addition, I believe LB513 would provide a new tool for law enforcement officers as they seek to curb illegal activity connected with this industry while helping the regulation of these businesses in local communities. On March 22, 2008, the Lincoln Journal Star ran a page article by Deena Winter titled, "Police struggle with escort enforcement." This article will be provided to you in a packet put together by a testifier following me. In this article it discussed how some escorts are just fronts for prostitution and without regulation of the industry it is difficult for police to bring enforcement. Lincoln Police Chief Tom Casady explains how some escort operators have kind of a "don't ask, don't tell" policy between them and their employees, which makes it difficult to go after the escort operator. The article from the Lincoln Journal Star rightly pointed out that legally escorts can do almost anything short of having sex, from lap dances to nude massages. In addition, it pointed out that escorts don't have to hit the streets for clients. They can advertise in the yellow pages or on-line. The private nature in which employees of such businesses work creates a climate where the lines between legal

and illegal activity is easily crossed. Prostitution and other crimes are notoriously connected to many of these businesses. In addition, and maybe most importantly, there's evidence that some of these businesses are engaged in the coercion of women and underage girls and boys through what we call human trafficking. I do not think we need to turn a blind eye. Evidence is piling up nationally, internationally, and even in Nebraska. In 2009, two Fremont girls ended up in Iowa through human trafficking. In that incident in Iowa...sorry. In that incident, an Iowa man was convicted under Iowa's human trafficking laws. On February 8 of this year, the Omaha World-Herald had an article where a husband and wife in Council Bluffs, Iowa, were arrested for sex trafficking. Moreover, one of our testifiers will speak to a couple of the instances that happened not far from the Capitol here, and other testifiers following me will address escort regulations in other states, human trafficking, and child prostitution in greater detail. In order to regulate this industry, preventing the flaunting of our prostitution and human trafficking laws and provide an additional tool for law enforcement to reach the operators flaunting these laws, LB513 requires several things. Escort agencies' employees, as the bill defines, would require them to obtain an escort agency permit or escort agency employee permit through a local permit authority. The local permit authority would be required to obtain fingerprints, criminal history, proof that all employees, owners and operators are at least 18 years of age, and other pertinent information for the local permit authority to evaluate the application. Under LB513, it shall be unlawful for a person to: one, operate an escort agency without permit, pursuant to Section 6 of this act; two, who operates an escort agency to employ an individual to work for such agency who does not hold a permit as a escort agent employee, pursuant to Section 7 of this act; part three, who operates an escort agency to allow an escort agency employee to be in the state of nudity while in the presence of a patron; four, to hold himself or herself out as an escort agency or to use or display the words "escort agency" without a permit, pursuant to Section 6 of this act; five, to act as an escort agency employee without permit, pursuant to Section 7 of this act; six, who holds a permit as an escort agency employee and does not have the permit on his or her person at all times; seven, who holds a permit as an escort agency employee to touch a patron while in the state of semi-nudity; eight, who is a patron to be in the state of nudity or semi-nudity while in the presence of an escort agency employee; nine, who is a patron to touch an escort agency employee while he or she is in the state of semi-nudity; and ten, who operates an escort agency to provide a service to any person under the age of 18 as a patron of the escort agency. Violations dealing with the operations and patrons will be a Class I misdemeanor. Violations dealing with the escort will be a Class IV misdemeanor. Again, this act defines escort by defining certain activities or services employees of a business would have to engage in or furnish to be designated an escort. Only permitted agencies and individuals would be allowed to operate in Nebraska. Fingerprint, background checks, and other personal information would be required at time of application. No felons would be allowed to an escort agency permit or escort agency employee permit. Individuals who have been convicted of certain misdemeanors listed may be denied a permit by the local permit authority. An

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application for an escort agency permit would also be required an agency to have an address, information about the property and neighboring properties. The initial application fee for escort agency would not exceed \$300, or for an employee permit application, \$200. The fees for both an agency and employee would be at least \$1,000 and not exceed \$5,000, providing enough flexibility in income to administer the local permit authority in various jurisdictions. In addition, LB513 would require an escort agency to provide every patron with a written contract for services. The contract shall contain the escort agency's employee's name, the name and the address of patron, services performed, the length of time of service, and the compensation, any special terms and statements that prostitution is illegal in this state. A copy of all such contracts will be provided to the local permit authority monthly and the contract shall be considered an open public record. I know that this is kind of a...I know that there's kind of a stigma placed on this bill. I know there's been joking towards the bill and at me in bringing what seems to be too many...a frivolous moral crusade. However, the more I looked into the issue and see the dark side...dark underside to this part of the industry, I believe the industry needs to be regulated. We regulate pawn brokers because stolen goods end up in those businesses. The exploitation of women and underage girls and boys can cause lifelong physical, emotional, and spiritual damage. We're talking about human beings, not things. This is not a frivolous issue, and some type of regulation should be addressed. There's nothing lighthearted about human misery, disease, or self-destruction which comes from prostitution. There's nothing lighthearted about theft and other crimes that brings blight and cost to the communities. Moreover, it's definitely...it definitely is not funny about an industry that is ripe for the exploitation of women and underage girls and boys, as we see with the stench we call human trafficking. I urge you to take this bill seriously as one piece of a complex puzzle. If we are going to allow escort businesses to operate in Nebraska, shouldn't we make some effort to regulate the industry so that they are not flaunting our prostitution laws by advertising everything short of prostitution? At the very least, shouldn't we demand some real pressure be put on them to not cross the line into illegal activity? Again, I know that this is uncomfortable topic that some would like to just have...not have to deal with, but I hope you will have a serious and constructive discussion today about an idea. LB513 would bring some accountability to these businesses and some deterrence to the further expansion of the illegal activity connected with the industry. I encourage you to advance LB513 to General File, and thank you for your consideration. I'd be glad to try to answer any questions. [LB513]

SENATOR ASHFORD: Any questions of Mark? How many proponents and opponents do we have of this bill? How many testifiers do we have? Okay. [LB513]

SENATOR COUNCIL: May I ask one question? [LB513]

SENATOR ASHFORD: Yes, Senator Council. [LB513]

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SENATOR COUNCIL: Yes. Thank you, Chairman Ashford. Thank you, Senator Christensen. I guess I, for one, don't take the issue of human trafficking lightly, but I do have some concerns about the bill and how far it goes and how far it doesn't go. And when I read certain aspects of it with regard to, for example, privately touching someone in a state of semi-undress, and this was a concern that came to me before Senator McGill advised that we in fact have a letter from a woman who's a private massage therapist and goes into individuals' homes and provides massages, the client is often in a state of semi-undress. And is it your intent that those individuals be subject to declaring themselves as escort services and obtaining escort licenses and permits? [LB513]

SENATOR CHRISTENSEN: No. They are licensed massage therapists. And in...I had a bill similar to this in Health and Human Services a year ago and we had this discussion and that's why we left out the term "nontherapeutic massage" that we used last time, because they said they didn't want the misunderstanding that we were attacking that industry. And we worked with some of the people that testified a year ago to change the language this way to make sure that we weren't imposing upon those licensed therapists. (Exhibit 1) And I got an e-mail this morning, which was a little too late to address this situation, from I believe the head of the Massage Therapist Association and I'd be glad to sit down and work with them on language, because they talked about the rub and different...body rub and things this way in that letter that I read this morning, and I'm glad to work with any of them details because I do not want to touch that industry. But in visiting with police enforcement, it has been so difficult for them to get to the people that are over the escorts is the reason that this would help the police enforcement be able to tie the two together by having the permitting process, and that was the attempt to stop the illegal activity. But I don't think this applies, but if it does I want to adjust it, because they are licensed massage therapists where these are unlicensed and that's why the term went to the body rub. [LB513]

SENATOR COUNCIL: Okay. And there's also a reference in the bill to exotic (sic) entertainment? [LB513]

SENATOR CHRISTENSEN: But again, this is still under the agency. It should not affect strip joints or anything that is legal now in this state. I'm trying to go after the activities that are seen illegal and I'm not trying to go after anything. If I have it worded wrong, I'll gladly work on correcting it because I'm not trying to attack the actual industry that is legal at this present time; trying to get after those that are illegal. [LB513]

SENATOR COUNCIL: But...and in essence providing a route to legality. [LB513]

SENATOR CHRISTENSEN: Yes. [LB513]

SENATOR COUNCIL: Thank you. [LB513]

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SENATOR ASHFORD: Thanks, Mark. Any proponents of this bill? [LB513]

AL RISKOWSKI: (Exhibit 2) Good afternoon, Senators. Al Riskowski, Nebraska Family Council, Riskowski is R-i-s-k-o-w-s-k-i. We got very involved with this a number of years ago and continue to get even more involved at Nebraska Family Council on this particular issue. We see it as a justice issue that is of great concern to us. And rather than get into how we became involved with it, I'd rather talk about what we are facing here in the state of Nebraska. We know at this point escorts have been identified as movers of prostitution services across state lines here in our state. We know that they have been found using human trafficking and children as their employees. So what would LB513 accomplish? In our mind, LB513 would accomplish this, that if money is involved, if it's a private type of entertainment and it's an erotic performance, then an escort permit would be required. A permit process would require escort-type services to be accountable for the legality of their services as well as the age and identity of their employees. And so how would this bill help law enforcement officers? Well, we believe that when an escort-type service is identified, a law enforcement officer will have the opportunity to approach the owner and employees requesting to see their permits. If permits are not available, then the officer can ticket or arrest the offending individuals. Currently, it takes a sting or an extended investigation to close down an escort service. I don't know if you are aware but within two blocks of the State Capitol there is a functioning escort service. There is another one not many blocks beyond that. We have quite a few functioning escorts here in the city, as well as we have a number that come in for a few days who will stop in our city, set up, and then move on. At a breakfast we held at the Governor's Mansion just earlier in the week, we invited the director of the FBI here in the state of Nebraska. He was there. We had the police chief from Omaha, Lincoln, Council Bluffs. They were all there and the Attorney General's Office. And the question we posed to them was, is this a problem in Nebraska? And they said, are you truly serious, it's an absolute large problem here in the state of Nebraska. Weysan Dun from the FBI stated their goal in Omaha is to protect the youth of America. They have set up their office and they have been functioning for less than...really, functioning less than a year to look at this issue here in the state of Nebraska, and they have already rescued five children out of prostitution in Omaha who were being held for use in that city. They are looking at a number of cases to prosecute even at this time. Tom Casady stated this: He said at least 50 percent of the children who are runaways here in Lincoln end up in the sex industry. At least 50 percent of the runaway children who are out on the street end up in the sex industry. [LB513]

SENATOR ASHFORD: Al, let's open it up to questions. [LB513]

AL RISKOWSKI: Okay. [LB513]

SENATOR ASHFORD: Do we have any questions of Al? [LB513]

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AL RISKOWSKI: I would just ask you... [LB513]

SENATOR ASHFORD: ...I guess my question would be, I mean, obviously police are enforcing existing law if they're addressing these issues now. [LB513]

AL RISKOWSKI: The difficulty is because this is a private type of business, unless you set up a sting, how do you catch them breaking the law? [LB513]

SENATOR ASHFORD: Well, you just do it. I mean... [LB513]

SENATOR MCGILL: You do a sting. [LB513]

SENATOR ASHFORD: ...you just do a sting. [LB513]

AL RISKOWSKI: Well, you mean set up a sting. And the police do set up stings and that's why we do have, just within the last year, the FBI have broken two cases in Omaha and... [LB513]

SENATOR ASHFORD: Yeah. And I'm aware of some of that and I think they are aggressively pursuing that illegality. I just worry about passing more laws when we have laws. But anyway, I get your point. Any other questions of Al? Thanks, Al. [LB513]

AL RISKOWSKI: Thank you. [LB513]

SENATOR ASHFORD: Any other proponents? [LB513]

TOM BARBER: Thank you, Senators, for letting me speak. I don't usually come here. I'm Pastor Tom Barber, B-a-r-b-e-r, and I'm the executive director of the People's City Mission here in Lincoln, organization where we shelter about 300 to 350 people every night, which includes prostitutes and people involved in the local sex trade, and I'm here to testify because I know for certain that Lincoln has got an issue with prostitution, at least in our city. It's a much bigger issue than a lot of folks might think. But here's the thing. The emotional damage it causes to men and women who sell themselves, as well as some of the people that use prostitutes, it's horrific. I can tell you this because the mission is one of the primary agencies in the city that's picking up the pieces of these shattered lives. Much of the drug and alcohol addictions we see going on every day can be attributed in some way to the sex industry, people taken advantage, at some point in their life, by somebody they trusted and they got caught up in the vicious circle of sex for money. The reason they became prostitutes are many, but let me tell you what they share in common: regret, low self-esteem, depression, addictive behaviors, and emotional instability. You know, if I could take all the guys that use prostitutes and have them spend a week with me and see the emotional damage it causes, I could cut

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prostitution in half in Lincoln, Nebraska. It's a bad thing. The costs to society for assisting them and their future families with the very social services we provide, it's very high. I understand the bill under consideration maybe isn't perfect and won't solve all the issues, but, look, I think we need to make a start. The mission will continue to do its part in helping those falling through the cracks and we will try to encourage them and try to build back their esteem, but we need some help. This bill or a bill similar to it might help curb prostitution, at least in Lincoln, and slowdown the men and the criminal groups that are in the market and especially those that are framing their trade as escort services. We know because we talk to them, not all of them, in fact many of them are doing a lot more than massages. So I ask you to please consider this and, if not this, please, please consider something. Don't leave the status quo the way it is, guys. It's not good. Thank you. God bless you. [LB513]

SENATOR ASHFORD: Thanks, Tom. [LB513]

TOM BARBER: You bet. [LB513]

SENATOR ASHFORD: Just...you might want to sit here for a second. There may be a question. [LB513]

TOM BARBER: Oh, I'm sorry. Yes. I apologize. [LB513]

SENATOR ASHFORD: And there may not be. [LB513]

TOM BARBER: I'm not used to this. [LB513]

SENATOR ASHFORD: Yeah, Senator Lathrop. [LB513]

SENATOR LATHROP: No, but it's...I think it's very helpful to have you come down here and tell us because I'm just a city guy from up at Omaha. I'd never have any idea that it was even an issue down here and the whole human trafficking thing is just not even on my radar. And so we appreciate your testimony. Whether this is the vehicle or something else, we appreciate your concerns. [LB513]

TOM BARBER: You know, I wish I could come here with something more than anecdotal stats, but we have our records on service point. I can tell you women coming in due to prostitution is rapidly increasing at the mission, rapidly increasing, and it's an issue. And if we don't do something pretty soon, we're going to pay the price in some way. [LB513]

SENATOR LATHROP: Is this sort of the standing on the corner or has it gone into a different sort of Craigslist kind of a... [LB513]

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TOM BARBER: You know, again, it's anecdotal. I don't know. But I can tell you from stories I've heard, and obviously I can't share with people, a number of people have been picked up. I understand a couple people, they're taken in cars to houses and then they are picked up and gone. I mean more and more I think the criminal elements are getting involved in this and I don't know who they all are, we're not connected, but I can tell you there's a growing amount of money to be made in this thing and a lot more players are coming in. [LB513]

SENATOR LATHROP: What's the relationship between what you're seeing and the escort services? Are they the vehicle for prostitution or are they doing something that's getting close to it? [LB513]

TOM BARBER: I think they're one of many. I think they're one of many vehicles, and I'm not here to share today that every escort service is a prostitution service, but I can tell you a lot of them do more than that. We've dealt with women that are coming out of that and it's certainly one of the major ways to do it because, I mean, if you're (inaudible) further your own business, I mean it's how you frame these. If I'm a business guy, I'm not going to advertise myself as a prostitution house, you know? I'm going to come up with something else, you know, obviously, and escort service is a good...it's a good cover. And again, it doesn't mean that everybody in the escort service is doing it, but if I were in that business why not call myself an escort service? I mean it's a great...I can get in the yellow pages, I can...I mean I can operate like a business and it gives me a great cover. So it's certainly a key issue. [LB513]

SENATOR LATHROP: Okay. Thanks. [LB513]

TOM BARBER: Yeah. You bet. [LB513]

SENATOR ASHFORD: Yes, Senator McGill. [LB513]

SENATOR MCGILL: Well, I guess this is more just talking than addressing you particularly, but I do know this is a big problem in Nebraska and across the country. I've gone to some legislative conferences where this is like the hot button issue now on the judiciary panels at NCSL, for instance. I don't know if this is the vehicle. I'd like to see an interim study so we're not just looking at the escort services but looking at the big picture and what we can do, because there are a few things in here about once, you know, even if you're a permitholder, what you can and cannot do. I'm a little worried about a bachelorette party who hires a male stripper and what they're...if they're allowed to touch him in this, when he has this much clothes on. You know, I'm a little worried about some of that, the particulars in this bill, but I get what we're trying to do and I would like to see us become more educated as legislators too. [LB513]

TOM BARBER: Senator, I'm so glad I'm not a lawyer. I don't know all the legal stuff.

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(Laugh) And what I do know is prostitution is an issue and I do know that escort services are strongly involved. What you do about that, how you phrase it, gosh, I'll leave that to better minds than mine. I just can tell you what's happening. [LB513]

SENATOR ASHFORD: Senator Lathrop. [LB513]

SENATOR LATHROP: Just an observation here, but it seems like twice a week I hear somebody express appreciation for not being a lawyer. (Laughter) And today we got the lawyer leadership people back there and I think they're right now thinking they're okay with being lawyers. [LB513]

TOM BARBER: I apologize to all you lawyers, and let me confess something to you. My son-in-law just is graduating this May from Georgetown in law and he's going to clerk for a federal judge, and so I've got one of them in the family, okay? (Laughter) So just know I got it but... [LB513]

SENATOR LATHROP: Fair enough. Fair enough. We're a little sensitive in the Judiciary Committee. [LB513]

SENATOR ASHFORD: I mean my sense is that if this...there's such a strong nexus, I think we do need an interim study. [LB513]

SENATOR MCGILL: That's what I think. [LB513]

SENATOR ASHFORD: But then we ought to just ban the whole thing, escort service, if that's what we're...if that's really what this is and if that's what our...maybe we ought to look into an interim study because it doesn't...it sounds to me like, at least what you're telling us, is that it's hard to draw a line. [LB513]

SENATOR MCGILL: And women are trafficked other ways, too, and so that's... [LB513]

SENATOR ASHFORD: Yeah, and they're trafficked other ways. [LB513]

SENATOR MCGILL: ...why I feel like an interim study would take a look at all of those things. [LB513]

SENATOR ASHFORD: But an interim study could really help here because if this injury is going on, to just pass a law, another law that relates to prostitution, I wonder if it's going to actually do anything. But if there's an activity going on which is where there's such a direct nexus and so much harm... [LB513]

TOM BARBER: There is. [LB513]

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SENATOR ASHFORD: ...then we need to look at the whole issue, the whole profession or whatever it is it's called, so maybe an interim study is a good idea. Thanks, Tom, very much. [LB513]

TOM BARBER: Thank you. God bless you guys. [LB513]

AMBER PARKER: Hi. My name is Amber Parker and I'm here and I just want to say that this legislation that is before you, it is a big issue. [LB513]

SENATOR COUNCIL: Excuse me. Could you spell your last name? [LB513]

AMBER PARKER: I'm sorry. Parker. [LB513]

SENATOR COUNCIL: Oh, I didn't hear it. Thank you. [LB513]

AMBER PARKER: You'll have to excuse my voice. I'm fighting a cold too. Spell it? Okay. [LB513]

SENATOR ASHFORD: (Laugh) No, you don't have to spell it. No, you're fine. [LB513]

AMBER PARKER: Okay. Like Bob Barker or Bob Parker? Okay. This legislation that's before you, I myself am not an attorney either but I do see a need. We do need laws that are actually going to be enforced, and I've heard a lot of talk about an investigation. My concern with an investigation is I looked at the business, just certain issues like having a business permit, making sure that they're a legal resident here in the United States, there are a lot of doors that could close through provisions that are in this legislation in closing. And on the escort services, of those that would follow through with the procedures, I really do believe that the state of Nebraska could set a precedent and close a big door in sex trafficking. What other business, other than escort services, is a door opening for sex trafficking? How many financial advisor businesses, real estate agents? So I do understand certain points but, to me, sometimes there's a gray area. We see a need. We need to protect our children and our families, and unfortunately, as a born and raised Nebraskan, I think there could be a very...a better job and a better improvement, and that's why I know it's very important that I'm here and it's not only speaking on my behalf but on others' behaves, too, that are very concerned. [LB513]

SENATOR ASHFORD: Thanks. Any questions? Thank you for coming over. [LB513]

AMBER PARKER: Thank you. [LB513]

SENATOR ASHFORD: Next proponent? [LB513]

LINDA BURKLE: (Exhibits 3, 4, 5, and 6) Good afternoon, Senators. This is Dr. Linda

Burkle, last name spelled B-u-r-k-l-e. This isn't in my written testimony but I would address the issue of human trafficking. I'm on a national antihuman trafficking council. I've been very involved in this issue since the early...well, about 2002, when the federal government passed legislation. I also would say that human trafficking is the third most lucrative business in the globe, after weapons and drugs. Now to my testimony. She was just 11 years old when I met her, standing there in the doorway with a 6-month-old infant on one hip, holding a teddy bear in her other hand and a pacifier in her mouth. How is it that a child of 11 could come to be a mother at such a young age? The answer was soon apparent and I began to become aware of her circumstances. I learned, rather circuitously, that both mother and grandmother were "in the business," a business that led to sexual exploitation and trafficking of a child. Her pregnancy was a consequence of her introduction into the family business. As a result, this child mother became a state ward and a resident of the former Booth Maternity Home, where I worked as a program director at the time. Another young woman, age 19, was also a resident and pregnant. She was married to a man who promised to love her. She was his one and only. In return, she would work the streets turning tricks to bring home money. He had convinced her this is how she would prove her love to him. So instead of snuggling in the safety of their bed, she was out on the dangerous streets at night, picking up johns to turn tricks. After all, her beloved was only a phone call away to come and pick her up and collect the money afterwards. While I've been privileged to work with victims of sexual exploitation all over the world, these described above live here in Nebraska in Omaha. There are countless others, some insisting that they are free agents or self-employed, others clearly victims, but all engaged in some type of sex for pay. So what do these real-life stories have to do with LB513, Escort Services Accountability and Permit Act. One only has to open the yellow pages and the answer is shockingly apparent. I brought the yellow pages with me from Omaha. This is my phone book: Cherry Girl Escorts, we're a tasty treat; Perfect Encounters, naughty girls, great rates, multi-girl specials; Girls Girls Girls; and on it goes. These are escort services, not massage parlors, not strip clubs, escort services. You will note there's only phone numbers and it references Web sites but no addresses. A study of 222 prostituted women in Chicago, Illinois, reports on average women participated in at least 2.7 different venues for prostitution. These include escort services, illustrating the fluid movement between prostitution venues. Additionally, 29 percent of the women in escort service prostitution were raped or violated ten times or more. This is a dangerous business. I see my time is out. Can I continue? [LB513]

SENATOR ASHFORD: No. [LB513]

LINDA BURKLE: Okay. [LB513]

SENATOR ASHFORD: (Laughter) But you probably can continue if we give you a question, but thanks, Linda. Any questions? Senator Lathrop. [LB513]

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SENATOR LATHROP: Just one. [LB513]

LINDA BURKLE: Yes. [LB513]

SENATOR LATHROP: Is there any purpose for an escort service that is not related to the sex trade? [LB513]

LINDA BURKLE: All I could speak to is my experiences working in the area of human trafficking and sexual exploitation. It is possible, I suppose, that there are legitimate escort services and, if they are, why wouldn't there be addresses? Why wouldn't there be something that was not quite so clandestine as what we're finding here? This is the concern. Many of the women we work with in our Wellspring Program, which is specifically for people that are trying to leave a lifestyle of prostitution, have been involved in escort services. Generally, there's a dedicated phone line, there's meeting places, etcetera. [LB513]

SENATOR LATHROP: Okay. I got another question for you. [LB513]

LINDA BURKLE: Yes. [LB513]

SENATOR LATHROP: Senator Synowiecki, when he was here, set up prostitution courts and I'm not sure we ever funded them. Are there any prostitution courts set up now which is... [LB513]

LINDA BURKLE: Not that I'm aware. [LB513]

SENATOR LATHROP: You know what I'm talking about? [LB513]

LINDA BURKLE: Yes, I do. [LB513]

SENATOR LATHROP: Okay. [LB513]

LINDA BURKLE: In fact, one of our staff actually testified at that hearing. That was several years ago. In fact, I was involved with meetings with him. And I don't believe that there's anything at this point in time. [LB513]

SENATOR LATHROP: Would that be helpful for these women? [LB513]

LINDA BURKLE: I believe so. Typically, for those involved in prostitution, specifically street prostitution, and always children that have been trafficked. There's a tremendous amount of mental illness, as well as drug addiction. Often, the drug addiction is actually promoted and encouraged and created by those that are exploiting the young people. [LB513]

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SENATOR LATHROP: Okay. Thank you for your testimony. [LB513]

LINDA BURKLE: Yes. [LB513]

SENATOR ASHFORD: And to follow up, I know that the prostitution courts are used in other jurisdictions very successfully. [LB513]

LINDA BURKLE: Yes. [LB513]

SENATOR ASHFORD: And I think it is something we need to pursue and... [LB513]

LINDA BURKLE: We work a lot with the courts and the judges in Omaha with our Wellspring Program. [LB513]

SENATOR ASHFORD: I know. [LB513]

LINDA BURKLE: Right. [LB513]

SENATOR ASHFORD: But I think...and I know you do... [LB513]

LINDA BURKLE: Right. [LB513]

SENATOR ASHFORD: ...and you do great work and I know your work obviously. But I think Senator Lathrop brings up a great point. It's something that needs to be pursued I think. Thanks, Linda, very much. [LB513]

LINDA BURKLE: Yes. Thank you. [LB513]

SENATOR ASHFORD: Next proponent? [LB513]

CALLI CAIN: (Exhibit 7) Good afternoon, Senators. My name is Calli Cain and I am a student at the University of Nebraska at Lincoln, here representing a student group called NUSAMS, which stands for Nebraska University Students Against Modern-Day Slavery, and I'm here today to tell you the story of a girl just a couple years younger than me that was caught in trafficking through the escort business just a few months ago here in Lincoln and the case is currently under investigation with the Attorney General's Office under the authority of Cari Crosby. And for safety reasons, I'll change her name, but Ellie grew up in Lincoln, went to high school here, graduated in 2009, and Ellie was an amazing singer, had a lot of musical talent and went to SCC to continue studying, had dreams to be a singer. And through a different connection, a music studio owner here in Lincoln contacted her and promised her a record deal and basically drew her in. And the problem was that they needed to make a lot of money to produce this

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record that he promised her by 2011, and so he convinced her to move in with him, and as soon as she moved in he took the \$300 she had and convinced her that the only way to make that much money that fast to get the record out was to be an escort. So he set up a Web site for her, put her on five different escort Web sites, on Craigslist, [BackPage.com](#), on Escort Post, [EscortHunt.com](#) in sexy escort ads including exotic pictures of her. And every day he would drop her off at a different motel here in Lincoln and she'd have a certain quota that she had to make, usually around \$600, and when she wouldn't make that quota she was either beaten or psychologically abused. And I got the chance to take her to the airport right before Christmas to get her out of the state after she sought the police for help, so we sent her off to a different treatment facility where she could get help, and during the car ride to the airport she spoke of several different girls that this particular manager or pimp, if you will, had. And so I just wanted to say that I'm in support of this bill because it would help give police more power to step up. They were aware of the issue before she sought their help, but there's nothing that they could do because they couldn't prove that she was being forced against her will. And so with this Accountability Act, it would just give the police another tool to step in earlier and do something by asking where their license or permit is, because a lot of these escort sites, like we've already established, are a tool for human trafficking. [LB513]

SENATOR ASHFORD: Maybe I missed it. Did you mention that this young lady was part of that escort process? I didn't... [LB513]

CALLI CAIN: Yes, she was. [LB513]

SENATOR ASHFORD: Okay. [LB513]

CALLI CAIN: She was. [LB513]

SENATOR ASHFORD: Okay. [LB513]

CALLI CAIN: And initially, she agreed. She agreed to it initially but then... [LB513]

SENATOR ASHFORD: She was a student at the university or... [LB513]

CALLI CAIN: She was a student at SCC. [LB513]

SENATOR ASHFORD: Okay. [LB513]

CALLI CAIN: But after a time, she was forced and continued to stay in it through threats against her and against her mother. [LB513]

SENATOR ASHFORD: And there was...there's a prosecution going on now of some

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kind? [LB513]

CALLI CAIN: There's an investigation right now. [LB513]

SENATOR ASHFORD: Okay. Okay. Thanks, Calli. Any questions of Calli? Thanks for what you do. [LB513]

SENATOR MCGILL: Thank you. [LB513]

CALLI CAIN: Thank you. [LB513]

SENATOR ASHFORD: Next proponent? How many other proponents do we have? Jim is here. Okay. Raise your hand. Whoops. [LB513]

DAVE BYDALEK: Senator Ashford, members of the committee, my name is Dave Bydalek, for the record that's B-y-d-a-l-e-k. I'm the executive director of Family First and we're here today in support of LB513. Back in 1976, the United States Supreme Court signified its approval of efforts to regulate sexually oriented businesses. The court stated that because these businesses have clearly documented negative secondary effects, the government has a substantial interest in protecting and preserving the quality of life for its community against these adverse secondary effects. These secondary effects include things like an increase in crime, especially an abuse of women involved, drug use and trafficking, as well as human trafficking. These problems associated with sexually oriented businesses, both inside and outside the establishments, are really universal to these types of businesses and it's these problems, the negative secondary effects, that form the constitutional basis for regulating these establishments in a more stringent fashion than other types of businesses. So for that reason, I'd like to once again signify our support for the bill and ask the committee to seriously consider advancing this to General File. Thanks. [LB513]

SENATOR ASHFORD: Thanks, Dave. Any questions of Dave? Thank you. Jim. [LB513]

JIM CUNNINGHAM: Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m, and I'm the executive director of the Nebraska Catholic Conference representing the mutual interest and concerns of the Archdiocese of Omaha and the Diocese of Lincoln and Grand Island. Our support for this bill is based on what you described, Senator Ashford, as its nexus to human trafficking. Our conference has adopted a general expression of support for public policy efforts to expose and combat human trafficking. Not only is it demeaning and a matter of exploitation, but it truly is an affront to and an assault on inherent human dignity. I've had the opportunity to discuss the issue of human trafficking with a number of my counterparts from other states--California, New York, Texas, New Jersey, Florida--and they make it very clear that if we have some idea that here in Nebraska, located in the

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Plains, that we are not involved with the issue of human trafficking, then we are being naive and not looking at it deeply enough. And I appreciate very much the committee's commitment to do an interim study on this. I think that the nexus of this trade with regard to human trafficking certainly does need to be scrutinized in a great deal of ways that an interim study would avail. I would also like to encourage the committee not to just routinely dismiss the concepts that are in this bill. I hope it will be a part of your consideration of this issue because I think the notion that this approach of licensing and regulating truly has the potential to serve as a tool of accountability and also deterrence. I thought that was a good point that was made in earlier testimony. Thank you. [LB513]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? No. Thank you. [LB513]

JIM CUNNINGHAM: Thank you. [LB513]

SENATOR ASHFORD: Next proponent? [LB513]

AMBER KONZ: (Exhibit 8) Hi. [LB513]

SENATOR ASHFORD: Hi. [LB513]

AMBER KONZ: This is kind of cool. My name is Amber Konz, that's K-o-n-z, and my passion is to help end human trafficking. My concern lies with the women who are part of this business primarily. I have been very blessed to grow up with a loving and supportive family, but there are many people in this world who are living in dangerous family situations. My mother is from a dangerous family and her past contains instance after instance of sexual abuse. She told me that she doesn't remember much about her childhood because she spent so much of it trying to leave, and the very day she turned 18 she packed her bags and moved to California to escape what was happening at home. She grew up in a very tough home and my mom is a very strong woman. However, the repercussions of such a past have had devastating effects. My uncles have nearly all reacted in violence. There has been jail time, suicide, desertion, and murder in my family, but where my uncles reacted in violence, my aunts, who have been sexually abused, have reacted with silence. That's just one dysfunctional family, you know, among a whole slew of them. But I'm telling you this because most of those women who end up as workers in the escort services have had a past such as this. If these women chose this life, it was because they felt they didn't have another option. Maybe they ran away and couldn't support themselves and resorted to prostitution. Maybe they suffered abuse growing up and were looking for affection in the wrong places; drug addiction, they needed to support a habit; or unplanned pregnancy, they need to support a family. There are many reasons, mostly coming from desperation or a need to feel loved. If they didn't choose this life, that means they have been lied to and trafficked and are being held against their will. The article that I've attached talks about a brothel that was busted and is being prosecuted right now and it talks about two girls,

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underage girls who are in that situation. I recently heard a story where a young woman from the United States was sold to a brothel for \$1,000, which is exactly one-third of what I paid for my first used car. That tells women in our society that we are worthless. I want Nebraska to be a slave-free state and I want women to know that they have worth. This is a huge issue that needs to be dealt with and this bill is just one step closer to the end. That's all that I have to say. [LB513]

SENATOR ASHFORD: Thank you, Amber. Thanks for your comments. Does anyone have any questions of Amber? Thank you. Thanks for sharing. [LB513]

AMBER KONZ: Thank you. [LB513]

SENATOR ASHFORD: Next proponent? [LB513]

SRIYANI TIDBALL: Hi. I'm Sriyani Tidball and I teach at the University of Nebraska and I also chair the annual... [LB513]

SENATOR ASHFORD: Could you spell your name just so the... [LB513]

SRIYANI TIDBALL: Oh. My last name is Tidball, T-i-d-b-a-l-l. [LB513]

SENATOR ASHFORD: Want to make sure we get it right. [LB513]

SRIYANI TIDBALL: My first name is Sriyani, which is hard to say but that's okay. I... [LB513]

SENATOR ASHFORD: It's a very nice name. I just couldn't spell it right off the bat. [LB513]

SRIYANI TIDBALL: Oh, that's okay. I also chair the Human Trafficking Conference at the university, which is an annual conference and we're going into our third year, so I do a lot of research on the topic. I'm really, though, here to be representing...I'm a mom of four kids and I think that's why I'm here to say I'm very concerned about the children of our country. The statistics say that there are over 300,000 teenage prostitutes in America and they are just the girl next door. They are not some refugee kid that was brought over a border. They are kids that look like all of you, your kids. And if we don't do something in our state to protect these kids, what are we going to say? That's why we have you here in this seat. We're saying help us. You need to just step up and figure out much more than this bill. This bill is really not enough. Thank you. [LB513]

SENATOR ASHFORD: Thanks, Sriyani. We have a question for you though from Senator McGill. [LB513]

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SENATOR MCGILL: Yeah. Oh, I was just going to say I hope...I mean...because I would agree that this bill probably isn't enough. I mean I have some issues with certain language in here but, in general, I feel. Hopefully, you would come to the table and bring your expertise and help us try to figure out other ways to get at this problem. [LB513]

SRIYANI TIDBALL: I'm counting on you, Senator McGill. [LB513]

SENATOR MCGILL: I'm counting on your help. [LB513]

SRIYANI TIDBALL: Well, we are available. There's a bunch of us professors at the university. And if we don't do something in Nebraska, how are we going to do anything anywhere else? We want to be the beacon for the whole country. We need your help. [LB513]

SENATOR MCGILL: Well, we'll be in touch. [LB513]

SENATOR ASHFORD: Well, we were 49th in breast-feeding or something. [LB513]

SENATOR MCGILL: Yeah. (Laugh) [LB513]

SENATOR ASHFORD: So we did do that finally after 49 other...anyway, thank you. [LB513]

SRIYANI TIDBALL: You're welcome. [LB513]

SENATOR ASHFORD: I don't mean to be flip. That's extremely important work. Thank you. Next proponent. (See also Exhibit 9) Opponents? Neutral? Senator Christensen, do you wish to close? Thank you for bringing this to us, Mark. I think this is... [LB513]

SENATOR CHRISTENSEN: Yes, thank you, committee, and thank you, testifiers. Just to give you a little bit where this bill come from, Colorado has an Escort Service Code that this is modeled after, which is Colorado law 12-25.5-101. I want to reiterate, you look in the yellow pages and look at all the escort services and what they are, you'll be shocked. Lincoln has got pages of them. I'm willing to look at an interim study on human trafficking, whatever we can do, and I'm willing to discuss any options we can do to deal with this human trafficking. I share the concerns of Senator Council, Senator McGill, and all the rest of you that have talked to me about this before and shared today. You know, I've been to both of the University of Nebraska's Human Trafficking Conferences. It's an annual event now. They've had two of them. That's part of what pushed me forward a year ago with legislation. It's every September-October, and I'll try to give everybody notice when I get mine. This issue saddens me. I just ask that we take a deeper look at this and go forward. Thank you. [LB513]

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SENATOR ASHFORD: Thanks, Mark. And I wonder, to me, if it's tough enough, as Senator McGill says. I don't know what the redeeming benefit of those businesses are if they're not businesses, they're something else. [LB513]

SENATOR CHRISTENSEN: That's correct. [LB513]

SENATOR ASHFORD: And so we'll take a look at it. Thanks. Thanks, Mark. Where do we go? Senator Lautenbaugh. [LB513]

SENATOR LAUTENBAUGH: Members of the committee, this is a bill that is not worth leaving my chair for. It is so brief and noncontroversial. (Laughter) [LB349]

SENATOR ASHFORD: Is there anyone here to testify on it? [LB349]

SENATOR LATHROP: I see Thalken here. (Laughter) You may not be thinking you got to get out of your chair. He drove down from Omaha. [LB349]

SENATOR ASHFORD: Ah, jeez, oh my gosh! Yeah, that's a long drive down here. [LB349]

SENATOR LATHROP: And apparently State Bar likes it too. [LB349]

SENATOR ASHFORD: Go ahead, Scott. [LB349]

SENATOR LAUTENBAUGH: Very briefly, all it does is clarify when answers are due in civil cases, I'm sorry, jury demands are due specifically in civil cases in county court. [LB349]

SENATOR ASHFORD: Okay. [LB349]

SENATOR LATHROP: All right, with that, let's have the guy that drove down from Omaha. [LB349]

SENATOR ASHFORD: It's a bit of a contrast from our last bill, but let's move...hi, Tim. Now you're not allowed to speak from your seat because we couldn't hear you back there. [LB349]

TIM THALKEN: Very good. Thank you, Mr. Chairman, Senators. My name is Tim Thalken, T-h-a-l-k-e-n, and I'm appearing today on behalf of the Nebraska Defense Counsel Association in support of LB349. The bill actually accomplishes two main goals. First, it clarifies when a jury demand must be made in county court, and, second, it allows for parties in cases removed from small claims court to conduct discovery without court approval. One of the rights that make our system unique is the right to a

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jury trial. In Nebraska, that happens in two different ways. In the district court, the right to a jury trial is automatic and, unless you waive it affirmatively, you get a jury trial. In county court it's the opposite. You don't get a jury trial unless you affirmatively demand it. Now under the statute as currently written, the demand for a jury trial in county court must be made by the, quote, answer day, and the problem with that is there is no definition of answer day. And with recent amendments, and I say recent, as of 2002 Rule 7 was amended to identify what the different pleadings are or accepted pleadings. One of those pleadings, for example, is a counter claim. There is no answer to a counter claim under Rule 7; there's a reply. So there's a question as to do you even get a jury trial under current law because there is no answer day. One of the other problems some of our members have run into is that, because answer day is undefined, some courts have held that answer day means 30 days after the date by which summons was served, and that can lead to some problems. We've had situations where plaintiff's counsel and defense counsel agree to extend the answer day; however, the court, on its own motion, has stricken a jury demand that was filed after the 30 days. And keep in mind that we're talking about the jurisdictional limit of county court, which is \$52,000, but in fact there really is no jurisdictional limit, because if a verdict exceeds \$52,000, all you'd have to do is pay the difference between the county court filing fee and the district court filing fee. So you can have a significant judgment entered against you without really having a right to a jury trial. Secondly, on the issue of discovery, when you file a small claims court action, the pleading requirements are very minimal. You can say basically it's on a piece of paper and you have basically a sentence to put forth your claim. When those cases are removed to the county court under current law, there is no right to do discovery. You have to petition the court and seek motion...file a motion for leave to do discovery. Now we have an adversarial system and the basis of that system is that, if you sue me, I should have the right to understand what your claim is and I should be able to ask you questions and understand what the evidence you're going to present against me is. This bill will change that situation in that you no longer have to petition the court for leave to do discovery in cases removed from small claims court. I think it's supported by the Nebraska State Bar Association. I do think it's somewhat noncontroversial so I would urge you to support the bill. [LB349]

SENATOR ASHFORD: Any questions of Tim? Senator Council. [LB349]

SENATOR COUNCIL: Yes. And thank you, Mr. Thalken. But I think that the discovery thing is potentially a little more controversial than you might think, and I suspect that the current requirement for a motion for leave is that far too many cases that are transferred from small claims court to county court find the plaintiff in those cases without legal counsel. They don't understand what's occurring and I suspect that that's the reason for the motion for leave, so that it provides those unrepresented individuals the opportunity to understand what's occurring as well as the opportunity to be encouraged to seek legal counsel. So I mean it would be something different, but most of the cases that are transferred from small claims to county court, you know, the plaintiff gets in and motions

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are started and they don't have a clue what's going on because they filed in small claims court because they thought they could just go in and present their case without legal counsel. So I'm...I guess I need a little more convincing that that's a necessary change. I think the reason it's there is for the protection of those plaintiffs, most of whom are unrepresented and lack financial resources. [LB349]

TIM THALKEN: And I understand that concern. I guess the issue is, as someone who practices as a defense attorney, if someone sues you, and again the jurisdictional limit in small claims court is \$3,500, if somebody wants a judge to enter a judgment against you for \$3,500 and the only allegation is you've breached a contract, I should have the right to know what contract are we talking about, how did I breach it, and what's the amount of damages, and that's all done typically through the discovery process. And so I don't think those are overly, you know, onerous questions to ask. I understand how they could be oppressive but there are protections within the rules that allow judges to quash certain discovery requests. And the problem we've had is that we have...some of our members have had numerous situations where county court judges have simply denied the ability to do discovery and I think, as a basic fundamental fairness, due process issue, if somebody sues you, takes the time to do that, whether represented or not, as a defendant you should have the right to understand what their claim is and what they're seeking to recover. [LB349]

SENATOR COUNCIL: Well, I've said if judges are denying discovery, they're denying discovery for a reason and...because it's been the rare situation where I've had a judge deny a discovery request, but that's just a point we're making. You have a \$3,500 claim. Defendants, you know, if they have the financial means, they go hire an attorney, they move it to county court, and then they do things that lawyers do and you've got this generally, up until that point, unrepresented person who, you know, I think the...again, I think the reason for motion and leave for discovery is to make sure that the person is either represented or understands what the heck is going on in the process. So...and you know as well as I do that...I mean that's the way that defendants, you know, generally hope to avoid all liability in a small...they just hope that the plaintiff in a small...who had started with a small claims court case won't or can't go to the expense of having an attorney to represent them once it's removed or transferred to county court, and I just don't want to take that limited protection away from those plaintiffs. I don't have any problem with the jury...the demand for jury trial. That's consistent with federal court, so...but I do have a problem with the discovery. [LB349]

SENATOR LATHROP: Okay. Any other questions for Mr. Thalken? I see none, Tim. Thanks for coming down. [LB349]

TIM THALKEN: Thanks. [LB349]

SENATOR LATHROP: Good to see you. [LB349]

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TIM THALKEN: Good to see you. [LB349]

SENATOR LATHROP: Have a great weekend. Anybody else here in support of LB... [LB349]

SENATOR COUNCIL: LB349. [LB349]

SENATOR MCGILL: Yeah, LB349. [LB349]

SENATOR LATHROP: ...349? Anyone here in opposition? Anyone in a neutral capacity? Opposition? Sure, come on up, sir. [LB349]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I'm against LB296 and LB349. Village or other people as plaintiff are less accountable. My experiences of anyone working for the city is contaminated and will sign anything whether it's...both under oath or not. To protect citizens' civil rights, we need more laws, not less, as proposed. I will relate only one of my experiences, case Hedrick v. Pfeiffer in federal court. I filed pro se after the city of Waverly for violating my property rights. They said I had violated their nuisance laws, which I admitted. I spent three weeks cleaning the mess when I discovered that a hasp and padlocks had been put on all the doors of the house. The house was a rental house some 300 to 400 feet away from the nuisance. In federal court, I claimed damages caused by the screws in the door and frames in my federal action. I argued the city of Waverly, in their nuisance petition, did not cover the house and that the Nebraska state law exempted the property as a farm over 20 acres. Federal Judge Kopf, writing law from the bench, said the property did not look like a farm to him. I did not think that an argument about a farm would fly as another state law gives cities authority to buy property within a quarter of a mile. You can't expect a judge to make a city attorney work when the judge can write law from the bench. He wasn't satisfied by one law. He wrote another law. My argument against the house not being specified by the city of Waverly, Kopf said that the house was covered. Waverly has a petition about cars and refrigerators and rocks, but no house. You might say how does it apply to writing law from a bench? Well, now Kopf changing the state law includes the law...house when not specified as precedence to the state law. My case is quoted exempt by Kopf. My friendly legislator K. Haar has agreed to try to rein in judge writing laws from a bench. We need a lot of help next year. I'm still finding (inaudible) on this. Appeal will be heard next month after some ten years. Thank you. [LB349]

SENATOR LATHROP: Very good. Thank you for your testimony. Are there any questions? Senator Lautenbaugh has...hold on a second. Senator Lautenbaugh has a question. [LB349]

SENATOR LAUTENBAUGH: Sir, I do have a question for you. Do you have any issue

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that specifically relates to my bill? [LB349]

RICHARD HEDRICK: Do I have what? [LB349]

SENATOR LAUTENBAUGH: Any issues that specifically relate to my bill which deals with when you can request a jury? [LB349]

RICHARD HEDRICK: Well, that's the one I didn't know if I should be neutral or just what, but... [LB349]

SENATOR LAUTENBAUGH: Well, it kind of matters because... [LB349]

RICHARD HEDRICK: ...mainly are you impeding anybody from getting justice? [LB349]

SENATOR LAUTENBAUGH: No. [LB349]

RICHARD HEDRICK: Well, then I'm not worried about anybody, just in getting justice. [LB349]

SENATOR LAUTENBAUGH: So you don't have...you're not actually testifying in opposition to LB296, are you? [LB349]

SENATOR HEDRICK: No, I... [LB349]

SENATOR LAUTENBAUGH: I'm sorry, I gave you the wrong number. [LB349]

RICHARD HEDRICK: ...thought maybe afterwards I should be neutral on it. [LB349]

SENATOR LAUTENBAUGH: LB349, the one about jury trial, you're neutral on that, to be clear? [LB349]

RICHARD HEDRICK: Yeah. [LB349]

SENATOR MCGILL: And for the record it's, yeah, neutral. [LB349]

SENATOR LATHROP: Okay. We'll put you down as neutral and the record will reflect that so that this might have a chance at consent calendar perhaps. It's okay with the State Bar apparently too. Anyone else here in the neutral capacity? Senator Lautenbaugh to close. [LB349]

SENATOR LAUTENBAUGH: Briefly, and I apologize, I did miss the part in the beginning about the fact that it would allow discovery without leave of the court, which, you know, may or may not be an issue and a point to be discussed later. It is an

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important bill in that judges are...I've had this experience where judges, on their own volition, have said, hey, did you request a jury in a timely way. And there are occasions where parties do agree to extend the answer day for whatever reason. Maybe they're trying to resolve the case. So this should at least put some clarity in the law. So while I said it was a simple bill, it's not unimportant either. [LB349]

SENATOR LATHROP: Okay, very good. That will close the hearing on LB349 and bring us to Senator Coash and LB296. Senator Coash. [LB349]

SENATOR COASH: Thank you, Senator Lathrop and members of the Judiciary Committee. For the record, I'm Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent District 27 right here in Lincoln, here today to introduce LB296. LB296 amends Nebraska's criminal procedures statute by allowing county attorneys to electronically file criminal complaints and information. Attorneys would not be required to verify their complaints or information by oath, rather verification by signature, which may in some cases be electronic, would suffice. This electronic filing procedure is similar to current practices in some child support cases, civil cases, district court, and federal court cases. And I have a county attorney behind me who is going to follow up and explain how this can help them get their job done more efficiently. [LB296]

SENATOR LATHROP: Very good. Any questions for Senator Coash? I see none. [LB296]

BRUCE PRENDA: Good afternoon. My name is Bruce Prenda and I'm a deputy county attorney in Lancaster County, here on behalf of the Nebraska County Attorneys Association. Thank you to Senator Coash for introducing the bill. Just to give the committee a little bit of background on the purpose the bill is being introduced for, current law and the current procedure is that a criminal complaint in the county court or a criminal information in the district court contains the charges obviously against the person. And as a county attorney as I prepare the complaint and the information, once those documents are prepared, I physically go down to the second floor or the third floor, depending on which clerk I'm filing with, and I raise my right hand and I swear to a deputy clerk that the information contained in the complaint or the information is true as I believe. The clerk signs it and then files it. I can also swear to the veracity of the documents in front of the judge when I'm taking a plea or other court proceedings. And that's the oath requirement that LB296 is removing. The requirement of an oath presents a problem when the court system right now is encouraging electronic filing. The purpose of electronic filing obviously is to encourage offices to go paperless. E-filing is done through Nebraska.gov accounts and it's available now in civil cases and it's actually available in criminal cases. I can file motions in my criminal cases electronically, but again, I can't do that with the complaints and informations because of the oath requirement. If the county attorneys are going to fully participate in e-filing, then the oath requirement has to be dealt with. If the Legislature or the policy concern is that

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prosecutors filing complaints and informations without attesting to the voracity of those documents, if that's the concern, I would point out several safeguards that are in place. First, every prosecutor is sworn to uphold the laws and the Constitution of the state of Nebraska when they become elected or when they become deputized representing an elected official. Every prosecutor obviously is an attorney sworn into the practice of law, bound by the court of ethics which requires and includes special rules for prosecutors, including rules for filing charges. For example, charges must be based on probable cause and supported by admissible evidence. State law requires county attorneys to have sufficient evidence before filing a charge. There are laws in place to accommodate e-filing right now. In terms of a fiscal impact, the impact would be primarily at the local level, depending on how aggressively the county attorney's offices use electronic filing. And finally, we would not anticipate an immediate and complete immersion into the e-filing system, but LB296 is a first step toward permitting county attorneys to use the e-filing system when filing complaints and informations. So thank you for your time. [LB296]

SENATOR LATHROP: Thank you. Hey, can you tell me what the purpose is of having you do these under oath presently? Are you subject to prosecution for swearing that something is true when it isn't or what's the safeguard that we would be taking out of the system if you no longer had to verify... [LB296]

BRUCE PRENDA: I think the perjury statutes would apply in certain situations if the prosecutor is filing complaints or informations and is not doing so truthfully, then there may be a perjury charge that could be filed. But again it's... [LB296]

SENATOR LATHROP: So as a practical matter I appreciate the need and we've been listening to the e-filing. We hear a lot of bills and a lot of testimony on e-filing now and certainly we're doing that exclusively in federal court. But my question is, do we need to have something as a substitute for the swearing under oath? I mean if you sign something or you file it as a prosecutor, should we set something up as a substitute? I mean all this is to accommodate the e-filing, right? [LB296]

BRUCE PRENDA: Right. [LB296]

SENATOR LATHROP: And it seems to me that we ought to...if going down to the clerk is impractical when you're e-filing or kind of nonsensical, shouldn't we have something that replaces whatever the safeguard of the sworn signature is? [LB296]

BRUCE PRENDA: Right. I think you're seeing the difficulty. If we have to go down and swear to it in person, then we might as well just leave it there and file it on paper. [LB296]

SENATOR LATHROP: Right, right, I got that. [LB296]

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BRUCE PRENDA: But if the motion...if the movement and the policy is to go toward no paper, then you have to do it electronically solely. And that would mean an electronic signature and that can be done, but you still run into the problem that you're seeing is that there would be no way of assuring that it's done under oath. [LB296]

SENATOR LATHROP: But what we could do is say that anyone who files by electronic signature an information or a complaint with the clerk's office and does so with an allegation that he knows or should know isn't true is subject to whatever the penalty for perjury is and that would fix it, wouldn't it? [LB296]

BRUCE PRENDA: It might. The interesting part of filing an information or a complaint is that when I file those documents, I'm not swearing that the information is true factually. In other words, if I file a complaint that an individual was assaulted, I can't swear that that individual was assaulted. But what I'm swearing to is that the information I have and considered has gone into the formulation of the charge of assault. And based on that information... [LB296]

SENATOR LATHROP: Your information and belief. [LB296]

BRUCE PRENDA: ...I'm swearing that as I believe that information to be true I'm filing that. That's right. And you mentioned the federal system, I worked there as a special assistant in the federal system and we did electronic filing there, but there are two major differences. One was the volume of filing. In Lancaster County alone we file 1,300 informations per year about and about 7,300 complaints. The federal system is nowhere near that filing in indictments. Another difference is the federal system is primarily indictment by grand jury where we have the paper, the grand jury executes it if it's found to be true, and then your true bill. We don't do that in the state system. It's all by complaint and information so. [LB296]

SENATOR LATHROP: Okay, thanks. Thanks. [LB296]

BRUCE PRENDA: Okay, thank you. [LB296]

MATT SCHAEFER: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, registered lobbyist appearing here today on behalf of the Nebraska State Bar Association. The bar supports LB296 out of the belief of or believes in the importance of the court's e-file initiative, especially in this time of dwindling resources. This bill allows for greater availability and use of e-file. Are there any questions? [LB296]

SENATOR ASHFORD: Thank you. I don't see any. Other proponents. [LB296]

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SHERYL CONNOLLY: (Exhibit 10) Good afternoon, Mr. Chairman, members of the committee. My name is Sheryl Connolly, S-h-e-r-y-l C-o-n-n-o-l-l-y. I'm the trial court services director for the Nebraska Supreme Court's Administrative Office of the Court, and I'm here today to testify in support of LB296. The Nebraska Supreme Court and the trial courts of Nebraska are working to improve the efficiency of the courts and provide cost-effective access to the courts for all the citizens of Nebraska. Using the technology which is available to us and by asking our judges, employees, and the attorneys who work with us to look beyond the way the work of the court has always been done, the courts are making great strides in eliminating duplicative work and unnecessary delays. Electronic filing of civil complaints and our ability to maintain civil records electronically instead of filing mountains of paper is helping many courts deal with their caseloads without increasing--and in some cases with reductions in--staffing. Electronic filing also allows us the opportunity to share work between counties so that we can ensure effective use of experienced employees in the rural areas where the caseload may not justify full-time permanent employees. As of December 2010, about 50 percent of our new civil filings were being done electronically. Our ability to provide e-filing in criminal and traffic cases has been limited because of the current statutory requirement that the prosecuting attorney swear an oath before a judge or court personnel upon filing of the complaint or information. By eliminating the oath requirements, you would allow the administrative office of the courts to move forward with plans for electronic filing of traffic and criminal complaints. It would allow prosecutors to file complaints 24/7 and would increase the access of prosecutors whose primary office in smaller counties may be in a different community or even in a different county than that which they serve as county attorney. Electronic filing would also improve the efficiency of the courts and would allow the public quicker access to court information regarding their appearance dates and waiver amounts. It would eliminate the need for the court to duplicate data entry previously done in the prosecutor's office. We would ask your support for LB296. And I'd be happy to answer any questions you might have. [LB296]

SENATOR ASHFORD: Any questions of Sheryl? Thank you, Sheryl. [LB296]

SHERYL CONNOLLY: Thank you. [LB296]

SENATOR ASHFORD: Other proponents? Opponents? Stu, been here patiently all afternoon. [LB296]

STU DORNAN: Good afternoon, Senators. Stu Dornan, S-t-u D-o-r-n-a-n, on behalf of Nebraska Criminal Defense Attorneys Association. A rancher once told me that before he removed a fence on his property that the former owner put up he wanted to know why it was put up. And I think it's very important, and Mr. Lathrop touched upon it, the verification under oath of the county attorney or prosecutor that the facts that he is about to charge a citizen with is an extraordinarily serious matter to that citizen. It's a public event and that taint, if he's arrested, whether...and perhaps wrongfully, is going to

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trail him the rest of his life. The county attorney's office is a very important buffer between law enforcement and their investigation what is filed. It's incumbent upon that county attorney to believe that not only has a...to reasonably believe that not only has a crime been committed but also that he can get a conviction. And if you remove the requirement of an oath, then you remove the teeth and the accountability of the perjury statute and the false information statute. A rogue county attorney or a rogue law enforcement officer can file a complaint. And remember that not only county attorneys can file complaints, citizens can file complaints with the consent of the county attorney and by posting a bond. So you run into a potential problem with if you have an unethical citizen or county attorney or someone who doesn't bother to read the charge to make sure a crime, the elements are there and a person can be convicted of clogging the courts of...and of burnishing somebody's reputation without any accountability for our justice system to go back on that particular person. There's some past history that I think if you want to take a look at it with respect to these bills where there were individuals who did file with a vendetta and the facts were not believed by them to be true. There's no accountability for them. I don't think that based on the last few years of what our state has gone through with respect to the Beatrice Six and other individuals that you want to have a lesser standard of accountability in one of the most serious powers that we have in our system. I think you want to increase that accountability. You certainly don't want to dumb it down. Nebraska Criminal Defense Attorneys Association has no problem with respect to e-filing. I think there are ways. I file in federal court all the time. There are ways where you can do an electronic signature and have the original in the file that was sworn to under oath. So I really think you need to take a look at this very seriously of eliminating this oath requirement because down the line I think you may find that it's going to cost this state a lot more money and lessen the accountability of people who are bringing charges, both citizens and county attorneys. The bottom line is to protect those citizenry from being wrongfully charged on a baseless offense. You can't unring that bell. [LB296]

SENATOR ASHFORD: Thanks, Stu. Any questions? Senator Lathrop. [LB296]

SENATOR LATHROP: Thanks, Stu. I appreciate and apparently sometimes I do go down the right path or at least things occur to me. And I am thinking or I did have a concern similar to what you've expressed and that is that there had to have been a reason for this in the first place. So have you dealt with the federal system or any other system where we could legislatively essentially provide that the oath is required if you file in person a hard copy; but in the event you file electronically, you're subject to our...you're presumed to or are there other, for example, federal statutes that do that? [LB296]

STU DORNAN: Yeah. You know, I think you would be well served by checking with the federal courts on this. You know, they apparently, and I'm not a technological, I'm terrible with technology, but they have been able to fashion a system that apparently

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works and, you know, there are many things that are filed on the road in federal court.
[LB296]

SENATOR LATHROP: Okay, good thanks. [LB296]

SENATOR ASHFORD: Seeing no other questions, thanks, Stu. [LB296]

STU DORNAN: Okay, you're welcome. [LB296]

SENATOR ASHFORD: Thanks for your comments. Other opponents? Neutral? Senator Coash. [LB296]

SENATOR COASH: Thank you, Chairman Ashford, just briefly to close. This committee has seen Chief Justice come in time and time again and said if we don't get on with technology we're not going to be able to run our courts efficiently. For me, this bill was a technology bill. This was about efficiency of courts. It wasn't about taking the teeth out of the process. I would...as I looked at this bill, I thought if this is good for the feds, good for civil cases, it can be good for the county court cases as well so leave it at that.
[LB296]

SENATOR ASHFORD: Thanks Senator Coash. Thank you, Colby. That ends our hearing. Thanks, everyone. [LB296]