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Judiciary Committee  
March 16, 2011

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[LB460 LB508 LB545 LB609 LB671]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 16, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB609, LB545, LB671, LB508, and LB460. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: Brenda Council.

SENATOR ASHFORD: Welcome, Senator Pirsch.

SENATOR PIRSCH: Thank you.

SENATOR ASHFORD: Welcome to everybody. We have five bills today. The first bill is LB609, introduced by Senator Pirsch. And we'll just go right ahead and have you introduce the bill, Senator. [LB609]

SENATOR PIRSCH: Thank you, Chairman Ashford and members of the committee. I am State Senator Pete Pirsch, for the record. It is spelled P-e-t-e P-i-r-s-c-h. I represent the Legislative 4th District. I am the sponsoring Senator for LB609, the bill which seeks to adopt the Correctional Facility Reimbursement Act. I'm introducing this bill on behalf of Douglas County in particular. It...the underlying problem is we are set to eliminate state aid to counties this year altogether. In past years, we have sought to limit state aid to counties. They are providing incarceration for prisoners who are being convicted under state statutes. So there are significant...it is a significant population in Douglas County and that leads to significant jail costs from year to year. And like I said, the state aid is going away. The goal of LB609 is to provide counties a mechanism that could potentially offset these pending losses. Most states, including Nebraska, have statutes which require that a portion of any salary an inmate earns while in prison, be garnished to help pay a portion of the costs of confinement. Under LB609, the Correctional Facility Reimbursement Act, Nebraska would join all of its neighbors, with the exception of Wyoming, who has exceptional revenues from coal and other natural resources, in assessing the ability of the prisoner...of their prisoners to help pay for the prison stay from income and assets. Assets, I should point out, are specifically...defined broadly, but do exclude a person's home outside of the correctional system. The mechanisms of LB609, which are mostly based from similar programs in Missouri and Michigan, have been operating since the 1980s, provide a methodical way for the state as well as cities and counties to determine which prisoners may have sufficient assets to help pay a portion of the costs of confinement and ensure the prisoners without sufficient assets are not required to pay a portion of those costs. Under the act--under the green copy of the act, I should add--the Department of Corrections would promulgate a form which would be used by the state and political subdivisions to determine which prisoners...the form would only be submitted to prisoners who are sentenced after the effective date of the act, as otherwise the volume on the Department of Corrections and prosecuting

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attorneys would be overwhelming. So it's prospective. So the idea is to determine which prisoners have sufficient assets via those forms, which would then be forwarded to the prosecuting attorney in that prisoner's case under the green copy. Failure of a prisoner to return the form or cooperate with the department or a political subdivision could be considered for purposes of parole determinations. If the prosecuting attorney has good cause to believe that the prisoner has sufficient assets to recover not less than 10 percent of the estimated total cost of care for the prisoner, or 10 percent of the estimated cost of care of the prisoner for two years, whichever is less. In no case could more than 90 percent of the value of the assets of a prisoner be used for the purpose of securing costs and reimbursements under the bill. The costs of any investigation, securing reimbursements, and the associated court costs under the act will be paid from the reimbursements that are secured with remaining reimbursements credited to the General Fund and distributed to the Department of Corrections and political subdivisions based on where the prisoners were housed. One of...again the underlying principle here is to secure a stream of revenue that will help counties in the absence of state jail reimbursement meet those costs that are borne upon them. I should mention that there is going to be an amendment. I support an amendment, and am bringing forward AM788 to this bill. And I'm not sure if you have copies handed out thus far, but...we do, I understand from the clerk. And that amendment seeks to address certain concerns and clarify parts of the bill that prosecuting attorneys have. It is not mandatory, but rather discretionary, for such prosecuting attorneys to investigate and seek reimbursements from prisoners. The language should prevent money from being spent investigating those who are incarcerated who clearly have insufficient assets to seek reimbursement and would allow counties that have no interest in pursuing reimbursements to essentially opt out of this act. The amendment would also correct other issues including duties which were originally assigned to the State Treasurer. These duties would be shifted to correctional facility administrators under the amendment. That would eliminate the portion of the fiscal note from the Treasurer's Office. Finally, the amendment strikes juvenile facilities from the definition of correctional facility in the act, as the intent of the bill was never to...with intent to pursue juvenile prisoners' assets. And so with that, I will just let the committee know that I do have another bill that I'm slated to, right now, be introducing in Revenue Committee. So I will waive my closing, and there are, my understanding is, individuals who are set here to testify from Douglas County, so. [LB609]

SENATOR ASHFORD: Thank you, Senator Pirsch. I don't see any questions. Thank you. [LB609]

SENATOR PIRSCH: Thank you. [LB609]

SENATOR ASHFORD: Let me, before we...come on up. But I want to introduce my colleagues. Senator Larson, Tyson Larson from O'Neill; and Senator Coash from Lincoln; Senator McGill, with her green on, from Lincoln; and Ollie VanDervoort here to

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my left is my committee clerk; and LaMont Rainey is legal counsel. So that's the team. All right, Sean, you're up. [LB609]

SEAN KELLEY: Okay. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today on behalf of the Douglas County Board of Commissioners in support of LB609. As Senator Pirsch indicated in his opening, the Douglas County Correctional Center is a huge cost driver in Douglas County. The Douglas County Board is constantly looking for ways to help alleviate the financial stress of this department. Currently, it's \$44 million a year to operate the Douglas County correctional facility. We feel this legislation will provide a much needed avenue for a revenue stream. It certainly is not intended for people who aren't of means to pay, but for those of means, we feel that they should pay for some of their stay. The amendment that Senator Pirsch alluded to, we think alleviates some of the concerns of NACO. And the county sheriffs, I think, they'll speak more to that certainly in opposition. And after reading the transcript from last year when Senator Giese introduced this bill, it appears the county attorneys will have some legality concerns and we'd be happy to work with them to try to make this a sound bill and constitutional, so. [LB609]

SENATOR ASHFORD: We try to go with the constitutional stuff, if we can. [LB609]

SEAN KELLEY: Yeah, sometimes it's not the priority, but it is for us. [LB609]

SENATOR ASHFORD: We're not perfect as some know, but...what's your budget, total budget, Sean? [LB609]

SEAN KELLEY: About \$300 million. [LB609]

SENATOR ASHFORD: And so this is about, what, 12 percent of your budget? Okay, do we have any questions of Sean? Seeing none, thanks. [LB609]

SEAN KELLEY: Okay, thank you. [LB609]

SENATOR ASHFORD: How many proponents do we have on this bill, those who are for the bill? Opponents? Come on up and...you're all familiar with the light system so I guess I don't need to describe it for this group. But for those that aren't familiar, we have a system using these lights in front of the speaker's chair that provides for three minutes to present your comments. The yellow light goes on when we would ask you to sum up. So when the yellow lights comes on, if you could sum up, and obviously if there are questions of the committee, that is not counted in the three minutes. Welcome, Senator Lathrop. Go ahead. [LB609]

JEFF LUX: Thank you, Mr. Chairman and members of Judiciary Committee. My name is

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Jeff Lux, L-u-x, I'm a deputy Douglas County attorney, representing the Nebraska County Attorneys Association in opposition of LB609, the Correctional Facility Reimbursement Act, at least how it's currently written. Our association basically has two overall issues with the bill in its present form. One has to do with basically cost and resources as how does it would affect the county attorney's office or a prosecutor's office across the state. We've got all different varieties from part-time county attorneys, part-time prosecutors, to two- or three-member staffs all the way up to, say, the Douglas County Attorneys Office. So with those smaller offices they would have a really hard time kind of handle this type of commitment. And with the larger offices, like I say in Douglas County, between our office and the city prosecutors, we're probably putting about 2,200 people a month into the correctional setting, either county or state, and we need a large staff to go through that amount of files each month. In addition, requiring a prosecutor to do these kind of cases, we lose our prosecutorial immunity doing these kind of cases. And if we did have that large a staff, we'd probably eat up a lot of the costs that may get passed forward. Also there's some constitutional concerns. This is basically a forfeiture action, and what the problem is in Nebraska, and it's unique to Nebraska, is that the Nebraska Supreme Court has determined way back in 1997, I think, that forfeiture actions that are associated with prosecutions are considered a punishment. And, therefore, these individuals would be punished twice, and that violates the double jeopardy clause. And so that's an issue. In addition to that, some of the assets that can be seized under the bill, Social Security, veterans compensation. The federal courts have already determined that going after Social Security violates the supremacy clause. The same thing is probably going to be true with veterans compensation. And the last issue is, that if we do get past the double jeopardy and we do get some money, where can it go? The Nebraska Constitution, Section 7, Article VII, Section 7 says that all proceeds from forfeitures have to go to the school fund. So that's another issue, that even if we could get some money out of this, you might have to tweak the constitution to divert it to where the need would be. So those are just some of the issues that we have. If there's any questions. [LB609]

SENATOR ASHFORD: Any questions of Jeff? I don't see any, Jeff. Thanks for your comments. [LB609]

JEFF LUX: Thank you very much. [LB609]

SENATOR ASHFORD: Thanks for coming down. Next opponent. Sheriff. [LB609]

GREG LONDON: Thank you. Good afternoon. My name is Greg London, L-o-n-d-o-n. I'm here representing the Nebraska Sheriffs' Association and the Sarpy County Sheriff's Office. Those two organizations are going to be opposed to the bill. I think one simple change would alleviate some of the problems. Right now it says "shall" take action and we would prefer it to say "may." It may work for other counties like Cherry County, for example, but in Sarpy County it may not work. So we just want a little flexibility down the

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road, if we're not making any money, to opt out of the program. Stu De La Castro, who is the facility administrator in Pottawattamie County, told me that they have tried this three times. The first time they tried it they ended up terminating their contract with a company out of Ohio because they just weren't pleased with the results. The second time they selected a company out of Colorado and that company in Colorado terminated the contract with Pottawattamie County because there just wasn't any money to be made there. And now Pottawattamie County is trying it a third time to see if it works for them. It looks great on paper but the problem is, I just don't know if there's going to be a lot of money to be made. I have a lot of experience dealing with inmates and most of them don't have any money. If they have jobs, it's pretty menial wages that they earn and that's my concern. It may be a lot of work for nothing. [LB609]

SENATOR ASHFORD: Thanks, Greg. We had Jeff down here yesterday, so. [LB609]

GREG LONDON: Okay. Thank you. [LB609]

SENATOR ASHFORD: Good to see you. Thanks for your comments. [LB609]

GREG LONDON: All right. Have a good day. [LB609]

SENATOR ASHFORD: Next testifier. [LB609]

JON EDWARDS: Good afternoon, Chairman Ashford and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials in opposition to LB609. I think the county sheriffs and county attorneys have articulated the concerns that they've pointed out to you today to the NACO board. And upon discussion and review of those concerns, our board took a position to oppose LB609. So with that, I'll just conclude my testimony. [LB609]

SENATOR ASHFORD: The only question I'd have is, when does Douglas County and the county officials get on the same page? [LB609]

JON EDWARDS: We do from time to time. (Laughter) [LB609]

SENATOR ASHFORD: That's not a criticism, by the way. [LB609]

JON EDWARDS: I understand. We do from time to time. [LB609]

SENATOR ASHFORD: It's an interesting dynamic. [LB609]

JON EDWARDS: It is, it is, no doubt. [LB609]

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SENATOR ASHFORD: So maybe the county and city ought to be one so that they can...(laughter). [LB609]

JON EDWARDS: Apparently that idea is out there. [LB609]

SENATOR ASHFORD: That's for another committee. [LB609]

JON EDWARDS: Sure. [LB609]

SENATOR ASHFORD: All right. Thank you very much for your comments. [LB609]

JON EDWARDS: Thank you. [LB609]

SENATOR ASHFORD: Any other testifiers? Alan. [LB609]

ALAN PETERSON: Chairman Ashford, members of Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am attorney and registered representative of ACLU Nebraska. We do have concerns about this bill. We have concerns about a lot of bills, but try to keep our mouths shut unless it's a constitutional concern. The experience from the research I've done on these kinds of remedies for budget problems has been that the criticism is largely that many families of inmates end up taking the blow rather than the inmate herself or himself. That is to say, even though the house or home might be exempt under the bill, there are other assets that are certainly shared by the family. And nationwide this has been done many times and it has withstood most constitutional challenges. Not all, but most. The problem then becomes, if it's constitutional, is it conscionable? ACLU is a Bill of Rights organization. I'm not supposed to get into policy very often. But in this one, you do get that question of whether a burden perhaps earned by the inmate is instead taken on by the family that hasn't done anything wrong. This is a concern barely constitutional in scope, but enough that I should mention it. The double jeopardy issue was raised. There are other constitutional challenges to these bills but they've lost, they've generally lost, and so I don't come up here arguing legal points unless there's some pretty good authority behind them. I will say, there is one other Nebraska problem from the constitution that has not been mentioned, and that is the possibility that this amounts not only to double jeopardy under our constitution, but perhaps a matter of the power of punishment being passed on from the Legislature which sets all the terms and maximum and minimum punishments, but being passed on at this point to judges and prosecutors. Lots of discretion is left in Senator Pirsch's bill to either go after or not go after particular cases, and I do think that may raise some separation of powers issues. With that I would answer any questions and thank you for your time. [LB609]

SENATOR ASHFORD: I don't see any questions. Thank you, Alan. [LB609]

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ALAN PETERSON: Thank you. [LB609]

SENATOR ASHFORD: (See also Exhibits 1-3) Thanks for your comments. Any other opponents? Neutral? Senator Pirsch has waived closing. Okay, great. Next bill. Oh, Rich, I saw Senator Pahls come in, I thought. There he is. LB545. [LB545]

SENATOR PAHLS: Thank you, Senator and members of the committee. Actually this bill is relatively simple and it's about four lines long and just let me read those because I think they in itself would be self-explanatory. My name is, again I should say, Rich Pahls, P-a-h-l-s. I represent District 31 of Omaha. What I'm going to read basically is sort of paraphrasing. An individual who is arrested, detained, taken into custody, or incarcerated shall pay a copay, and there's not a set dollars for this, dollar for any and all medical services sought, except that individuals who are not of sufficient means to afford that copay shall not be required to pay such copay. Basically, what they're saying is that if you can afford to pay, there is an expectation that you would help with the copay. If you look at the fiscal note, Douglas County--I'm carrying this bill for Douglas County. Douglas County, they estimate they would save around \$100,000 if they would use the inmates...or the individuals would pay the copay. And I took a look at Lancaster, they set it between \$15,000 and \$40,000. Now again if you are in this...fall into one of these categories, if you have insurance, of course, that pays. If you're Social Security, that pays. If you're a veteran, those things already pay. These are those individuals, you know, who can afford that. And you may ask, well, how do you know who they can afford it? Douglas County does have a program or a...I should say, outlines how a person is of means. And I am hoping that one of the individuals who follows me would make that clear. [LB545]

SENATOR ASHFORD: Thank you, Rich. [LB545]

SENATOR PAHLS: Thank you. [LB545]

SENATOR ASHFORD: Any questions of Senator Pahls? Yes, Senator Coash. [LB545]

SENATOR COASH: Thank you, Senator Ashford. Senator Pahls, you didn't give us a number and I understand that's for us to hash out, but yet the Fiscal Analyst was able to come up with... [LB545]

SENATOR PAHLS: They use the number between \$5 and \$10. Those are the numbers that's typically suggested. And again, if this bill would leave this committee, then that copay would have to be set by this committee, but they did use that number. [LB545]

SENATOR COASH: Okay. And is it your understanding that the savings will not just be from collecting the copay but also from the unuse of...in other words, if inmates knew they had to pay, they might not say, oh, my arm hurts, I've got a headache, and they

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may choose to do what most people would do which is kind of tough it up, and...is that part of the savings? [LB545]

SENATOR PAHLS: Tough it up. I think that's part of the savings because you would not use as much staff time and that would be part of the overall. It's sort of, I would say, two approaches, those dollars, and then probably cutting down on utilization. [LB545]

SENATOR COASH: Okay. Thank you. [LB545]

SENATOR ASHFORD: Senator Lathrop. [LB545]

SENATOR LATHROP: Rich, I got a practical question for you. If you pick somebody up at, let's say it's a domestic disturbance. Some guys, like they always do on Cops or stand out there with no shirt on, (laughter) and maybe they're in jeans with nothing in their pockets and they arrest them and take them downtown and they put them in jail. They can't bond out because they don't have any money. Now they're down in the Douglas County Correction Center with no money, or jail or wherever these people are, and they don't have any means to pay the deductible, do we run in...I mean, where are they going to get the care? And what's... [LB545]

SENATOR PAHLS: Well, I think what happens here is, at the state level, you know, everyone deserves a service. So I'm assuming that at the county levels they're not going to...and that may be a question to ask one of the people following me. They're not just going let a person sit there and not be... [LB545]

SENATOR LATHROP: Well, that's the question, though, because you said if you have a deductible it will cut down on utilization. [LB545]

SENATOR PAHLS: Right. [LB545]

SENATOR LATHROP: If somebody comes into the correctional center, they're jailed for whatever reason and, say, they need medication, an antidepressant, something for bipolar, or their appendix is about to burst, and you go, you got your five bucks? And they say, no, I don't. Well, you know, you're not getting the care. I mean, otherwise you don't cut down on utilization and what we end up with is, the county ends up having these people owe the county for something. [LB545]

SENATOR PAHLS: Yes, and that may be if you...if we get a true definition of what they classify a person as being an indigent. The county, I'm hoping they can give you that answer. This is the process we've... [LB545]

SENATOR LATHROP: On indigency. [LB545]

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SENATOR PAHLS: Yes, what they classify. Because, see, they...it's my understanding. But I don't...since I don't have total knowledge of it, they do have, like, a bank account. Of course, in your instance, there's no bank account established, and so I'm sure they have to have a procedure in place. [LB545]

SENATOR LATHROP: Okay. [LB545]

SENATOR PAHLS: If not, I would make sure that would be clear. [LB545]

SENATOR LATHROP: Okay. Thanks, Rich. [LB545]

SENATOR PAHLS: Yeah, thank you. [LB545]

SENATOR ASHFORD: I don't see any. Thanks, Rich. Are you going to... [LB545]

SENATOR PAHLS: Thank you. Well, I'm down there, I'll trade. Senator Lautenbaugh is down in front of my committee. I'll send him back. [LB545]

SENATOR ASHFORD: That's all right, you can...no, I'm just kidding. (Laughter) [LB545]

SENATOR PAHLS: Thank you. [LB545]

SENATOR ASHFORD: Thanks, Senator Pahls. Sean. [LB545]

SEAN KELLEY: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today on behalf of the Douglas County Board of Commissioners in support of LB545. First, we would like to thank Senator Pahls for introducing this legislation. Just generally the cost of medical care at the Douglas County Correctional Center is \$5 million. It's continuing to rise. They've had...they had 16,000 sick calls last year alone. Mary Earley with Douglas County Correctional Center will follow me and be able to answer any technical questions. She knows it all. So if you have any questions for me, I'd be happy to answer them. [LB545]

SENATOR ASHFORD: And I...this is a serious problem, there's no question. You know, how to deal with it is really the issue, but...thanks, Sean. I don't see any questions. [LB545]

SEAN KELLEY: Thank you. [LB545]

SENATOR ASHFORD: Next testifier. [LB545]

MARY EARLEY: Good afternoon. My name is Mary Earley. M-a-r-y E-a-r-l-e-y. I'm

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captain at the Douglas County Department of Corrections and I'm here to represent the County Board of Commissioners. Thank you for the opportunity. The County Board of Commissioners does support the passage of LB545. Douglas County Corrections has a population that is medically underserved in the community. Access to healthcare is frequently hindered by a lack of income and insurance. I suspect that this is not unique to Douglas County. When this underserved population enters the local jail, they can and do utilize medical services. Allow me to provide just a couple of facts from Douglas County from 2010. In fiscal year, inmate healthcare costs our taxpayers over \$5 million. Each individual incarcerated at Douglas County Department of Corrections was seen by a medical provider an average of 14 times. A fair amount of these visits were unwarranted and often frivolous, including such problems as paper cuts, headache, cramps, minor stomachaches or head colds. Under normal circumstances, we certainly wouldn't see a medical provider for that in the community; 16,826 inmates were seen upon entrance to the jail for a screening, which includes medical, dental, and mental health. We don't intend to look at that as a copay type of charge because it's required for us to do that to ensure that correctional staff is aware and prepared to deal with any kind of emergent or chronic medical type issues; 5,479 inmates were in custody for at least 14 days and received a history and physical exam which includes a medical, dental, and mental health exam. In addition to that, 1,466 inmates received dental care; 169 inmates required an urgent emergent trip to an outside emergency room; 344 inmates were taken to medical professionals in the community for service which could not be provided at the jail. We feel at Douglas County that inmate abuse of free medical services does increase the overall cost of delivering inmate healthcare. Inmate abuse detracts from healthcare that is needed and should be provided to inmates with legitimate or chronic healthcare problems. Requiring inmates to pay even a nominal fee will hold inmates accountable for their decisions and actions. Charging a fee will also reduce the number of offenders that desire to access healthcare, ultimately allowing the medical staff to focus on inmates that are really sick. So thank you for your time. Questions, please. [LB545]

SENATOR ASHFORD: Senator Coash. [LB545]

SENATOR COASH: Thank you, Chairman. Thank you for your testimony and I had some questions and you did answer a few of them through your testimony. So you obviously see misuse of medical care by the inmates. [LB545]

MARY EARLEY: Yes, sir, we do. [LB545]

SENATOR COASH: Okay. Has Douglas County Corrections tried to do anything administratively to take care of that problem through any kind of administrative, and if so, what were those? [LB545]

MARY EARLEY: I believe that we have. We try to keep inmates separate that should

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not be together. That's one administrative measure that we take. Oftentimes, inmates will write a request to go to a medical clinic in order to visit with someone that they shouldn't be visiting with. We have tried to eliminate that. We also triage all our medical requests from inmates within 24 hours. If there's a manner in which we can provide service to that individual on their housing unit, not move them, or remove them to the medical clinic, we try to treat on the...actually on the housing unit. And that has eliminated a little bit of the traffic flow because they know they're not going to get out to visit for a nonserious or urgent medical condition. So we have taken measures to try to reduce the numbers. [LB545]

SENATOR COASH: Okay. That's helpful. My second question kind of follows up with what Senator Lathrop was asking. If you have an inmate who may have funds, may have means to pay a copay, but because they're incarcerated, they don't have access. How do you address the issue where you may have an inmate who has money. You know, I mean, I have money but if you ask me for \$5 right now I would have to go to my house to get a checkbook to write a check or I would have to take my ATM to get cash out. How do you address inmates who have funds but because of their incarceration don't have access to their funds? [LB545]

MARY EARLEY: We have inmates who are indigent who do not have any money. We have a lot of...there's a large homeless issue in Douglas County and we have a method by which to determine whether individuals are indigent. They would not be precluded from service. They're not now nor would we preclude them at all. [LB545]

SENATOR COASH: Well, I understand that. I'm talking about the inmates who, they've got a bank account, but they got arrested and they didn't have their wallet on them. [LB545]

MARY EARLEY: Right. Okay. The inmates have an electronic bank account while they're incarcerated. [LB545]

SENATOR COASH: Okay. [LB545]

MARY EARLEY: They have...some of them have more money in their savings account, than I do, in the jail itself. So they have access to that in order to purchase items from the commissary and to purchase phone time, personal clothing, and other items that would make their stay a little bit more comfortable in a correctional environment. So they have an inmate account already established and set up. [LB545]

SENATOR COASH: Okay. So you're talking about pulling the copay not from their personal account, if that exists, but from an inmate account? [LB545]

MARY EARLEY: That is correct. [LB545]

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SENATOR COASH: And does every inmate that, every person who comes through there get one of these set up? [LB545]

MARY EARLEY: Yes. [LB545]

SENATOR COASH: How does that get funded? I mean... [LB545]

MARY EARLEY: Those are personal funds that the individual has who becomes incarcerated. They either have that money on their person when they arrive or they have individuals send the money to them while they're in the jail, and then that money gets placed on their inmate account. [LB545]

SENATOR COASH: Okay. So, because you can't have inmates walking around with cash so, right? Is that reason for that? [LB545]

MARY EARLEY: We don't at the main jail. There are work release facilities in the state and at Douglas County that they are allowed to carry a certain amount of cash with them. [LB545]

SENATOR COASH: So in order for that...but for the other inmates that don't have cash, for those inmates to have that inmate fund put in there, somebody from the...they either have to come in with cash or somebody from outside has to fund that. [LB545]

MARY EARLEY: Correct. [LB545]

SENATOR COASH: And it can be...the funding for those could be their own funds, it could be the girlfriend takes \$20 of her own money and puts it in there for her boyfriend. I mean, it doesn't matter to you where the funds are coming from, is that correct? I mean, you'll let an inmate...an inmate can get the funds from whether he or she can get them from. [LB545]

MARY EARLEY: That's correct. That's correct. We do monitor for illegal activity though, so it does in a certain sense matter, but not...if it's a family member or friend sending the funds in, then that's acceptable. [LB545]

SENATOR COASH: Could you see this happening where if this bill were enacted an inmate would say, well, don't put any funds in my account because then when I go to the doctor they'll take it and I...but my understanding, could you see...could you see that happening? [LB545]

MARY EARLEY: That is a possibility, absolutely. Absolutely, that is a possibility. [LB545]

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SENATOR COASH: But what this bill is trying to accomplish is a scenario where an inmate who has funds would make a decision whether or not he wanted to spend some of those funds on going to the commissary or the medical care. [LB545]

MARY EARLEY: That's correct. [LB545]

SENATOR COASH: Okay. I think I understand it. Thank you. [LB545]

SENATOR ASHFORD: Those are good questions. Thanks, Mary. [LB545]

MARY EARLEY: Thank you. [LB545]

SENATOR ASHFORD: Okay. Next testifier. [LB545]

JON EDWARDS: Chairman Ashford and members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials in support of LB545. We believe that this change or this provision within statute would provide a framework within which correctional facilities could try to institute some sort of a policy or procedure in which maybe they can recoup some of the costs associated with inmates that are touched by healthcare costs. So, hopefully, it could lead to curbing some of the costs overall for jails. So with that, I'll conclude my testimony. [LB545]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, thanks. [LB545]

JON EDWARDS: Thanks. [LB545]

SENATOR ASHFORD: Next proponent. Opponents. Alan. [LB545]

ALAN PETERSON: Mr. Chairman, members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I represent as sometime attorney and as their registered representative, the ACLU Nebraska. This is a very modest and moderate bill. The concern that we would have in regard to the civil liberties issues is that, while there may be intake screening at the major correctional institutions and in Douglas County, certainly there is not in most of the smaller counties. I don't have statistical information but just from practicing law a long time and dealing with a lot of inmates, that doesn't happen. You don't have a major test for chronic ongoing illnesses, mental disease, and so forth, as a routine available service. This bill would cause, it seems like, a minor delay or an interference with the delivery of possibly really necessary serious medical help to people in those places where there isn't that kind of screening. The law in this area was set a long time ago in Estelle v. Gamble, U.S. Supreme Court, which said that cruel and unusual punishment is not always in the infliction of physical pain, but also

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includes the failure to accord medical care to inmates if they are matters of serious concern. I have in mind in looking at the statistics for Hepatitis B and C, other diseases that may be chronic and extremely serious, if an inmate has some symptom, he or she is going to want to go check on it. But it's always a balancing thing. Do you give up your small allowance for candy, snacks, cigarettes, whatever, in order to spend the five or ten bucks and just go check on something? You have to care not only about that inmate but about others who might be infected if it's a contagious situation. That's the concern. Without a screening for those kinds of situations, and I know there isn't at many of the jails, you have a risk not only to that inmate that he or she might take, but also to the other inmates that the inmate might come in contact with. That could be a violation of the Eighth Amendment. I don't think this is going to be worth it. Fremont paid nearly a million bucks for failing to give counseling and care to an inmate who committed suicide. And there are other instances like that, not to pick on Fremont. But that's my concern. Thank you very much. [LB545]

SENATOR ASHFORD: Thank you, Alan. Thanks a lot. Any other opponents? Seeing none. How about neutral? I'm sorry, any neutral testifiers? Okay. And Senator Pahls waived. Speaker Flood is up next, LB671. [LB671]

SENATOR FLOOD: Good afternoon, Chairman Ashford, members of the committee. My name is Mike Flood, F-I-o-o-d. I represent District 19, which includes all of Madison County. LB671 would amend Section 25-21,271(1) and prohibit a person required to register under the Sex Offender Registration Act from changing his or her name. This change is made on page two of the green copy, lines 5 through 8. As you know, this committee advanced and the Legislature later adopted LB147 last year. The provisions of that bill became operative January 1, 2012, and among other things provided that clerks of the district court send a copy in hard or electronic form of all the name change orders to the Sex Offender Registration and Community Notification Division of the Nebraska State Patrol. Certain provisions of that bill would no longer be needed if this bill were to go into effect, and here I'm looking to stricken the language on page three, lines 14 through 16, and page eight, lines 13 through 20 of the green copy. We've been working with Bill Drafters in my office, and I think it makes sense if you decide to advance this bill to make some additional changes to the green copy. I've prepared AM808, which I can pass around. First, this amendment would add to the requirements already in statute for a name change petition by requiring that the petitioner state he or she is not a person required to register under the Sex Offender Registration Act. Second, it would require the petitioner to deliver a notice of filing for name change to the Sex Offender Registration and Community Notification Division of the State Patrol. And then finally, I believe it would be good to spell out in the statute the duties the patrol has regarding this notice. I would propose that adding when the State Patrol receives this notice, then it shall determine whether a name change is for a person in the central registry of sex offenders, and then notify the district court where the petition is filed. As you may know, there's a sex offender treatment facility in my district. It's called the

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Norfolk Regional Center, and different people in my community have contacted me about the need for this bill. The practice of a registered sex offender changing his or name concerns folks in the Norfolk area and across the state. In talking to the Madison County District Court clerk's office in Madison, I understand that in January and February of this year there were five petitions for name changes requested by patients at NRC. I think this bill would simplify the tracking of convicted sex offenders and better ensure the safety of the public. I don't have an exact count of how many states prohibit a person who is a registered sex offender from changing his or her name, but I do know that several states do this, including Illinois, Wisconsin, California, and Utah. Others have restrictions or provide for name changes only in limited circumstances. With that, thanks for looking at this bill and for your consideration. [LB671]

SENATOR ASHFORD: Thank you. Any questions of Senator Flood, Speaker Flood? I don't see any. Thank you. [LB671]

SENATOR FLOOD: Thank you. If it's okay, I'll waive closing. [LB671]

SENATOR ASHFORD: Okay, waive closing. Any proponents of this bill? How about opponents? We have one opponent. Why don't you come on up. [LB671]

BRIAN KITT: Thank you, Senator Ashford and Senate Judiciary Committee. My name is Brian Kitt, and I'm actually here for another bill. But in listening to Senator Flood talk about this, I want to go back to something that Mr. Peterson said earlier. He talked about an earlier bill may or may not be constitutional. But is it a bill that is conscionable? We're getting to the point where we want to make absolutely everything in the world illegal to sex offenders. Pretty soon it's going to be illegal to breathe the air. These laws are for child safety. For child safety, a person can't change their name? If a female is a registered sex offender, does that mean she cannot get married now? If a female wants to get married to a man, change her name is part of a regular legal binding marriage contract, she cannot change her name for child safety? I'd really be interested to hear Senator Flood explain to us how this is for the safety of children that a person cannot change their name. As long as a person changes their name legally, there should be no question about whether this is something that tracking or not tracking. As part of the Sex Offender Registry, LB285, if a person changes their name, they're required immediately to report in person or it's a felony if they do not report their name change. And now Senator Flood wants to say, for child safety we can no longer change our name? I guess I'm just tired of seeing all these laws come across for child safety. You take away all these rights and privileges and just add legislation after legislation after legislation. The list of requirements that are put on sex offenders is so incredibly burdensome that a sex offender has no idea of what's legal and not legal anymore, because nearly everything is illegal. And this just adds to the list. I think somebody needs to stand up and say, enough is enough. These laws for child safety are just getting out of hand. And with that, I'll end. [LB671]

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SENATOR ASHFORD: Thank you, Brian. Any questions of Brian? I don't see any. Thanks, Brian. [LB671]

BRIAN KITT: Thank you, Senator. [LB671]

SENATOR ASHFORD: Do I have any other opponents? Neutral testifiers? Senator Flood, Speaker Flood, or actually we're through now, you can...but you waived closing, I guess, so. [LB671]

SENATOR FLOOD: I can respond just briefly there. [LB671]

SENATOR ASHFORD: Okay. [LB671]

SENATOR FLOOD: You know I value the public hearing process and that's an interesting...I mean, that's a valid response to my testimony as it relates to somebody that gets married and changes their name is part of that custom. One of the things that I had prepared here, if that was a question for the committee is, you know, several states do allow a name change if it requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. That's the way the state of Arizona does it, you know. But, you know, I'd like the chance to kind of watch the rest of the day's testimony as it goes on other bills and I'll certainly visit with the committee. If the committee does advance something from, you know, the genesis of this bill, let's talk about it, so. And I appreciate the testifier's testimony. [LB671]

SENATOR ASHFORD: (See also Exhibits 4, 6, and 7) Thanks, Mike. Yes, okay, now Senator Bloomfield is here. Senator. LB508 is the next bill. Welcome, Dave. [LB508]

SENATOR BLOOMFIELD: And thank you. I don't have my pink slip quite ready. Linda is working on that back there and I will have a handout here. [LB508]

SENATOR ASHFORD: Oh, that's okay. That's all right. We're just happy to have you here in person. [LB508]

SENATOR BLOOMFIELD: Well, it's good to be here, I think. And this is my first time ever, so be a little patient if you can. [LB508]

SENATOR ASHFORD: We will be very...don't worry. [LB508]

SENATOR BLOOMFIELD: That's good. Chairman Ashford and members of the Judiciary Committee, my name is Senator Dave Bloomfield, that is D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent Legislative District 17. I'm pleased to introduce my only bill of the session today, LB508. I'm introducing LB508 on behalf of the children

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who live in South Sioux, Blair, Omaha, and other communities in Nebraska, especially those that border Iowa. LB508 amends the Sexual Predator Residency Restriction Act to allow political subdivisions to adopt regulations to restrict sexual predators from living within 500 feet from a park. Under current law, the Sexual Predator Act allows political subdivisions to adopt regulations to restrict predators from living within 500 feet from a school or a childcare facility. This bill simply adds "park" to the list of places where sex offenders may be restricted. LB508 gives the definition of a park, including the requirement that the park is at least 2,500 square feet of ground or floor space. My predecessor, Senator Bob Giese, introduced a similar bill before this committee in 2009. That bill was LB265. It did not include the size requirement for a park. It was suggested to me that some restrictions be placed into statute so that a city or a small town could not call a very small piece of land, like a two-foot square on every corner, a park and thereby prevent any sexual predator from living in the town. The Sexual Predator Residency Restriction Act was adopted in 2006. Iowa and other states have since adopted more strict residency requirements for sex offenders. Those restrictions have caused many sex offenders to leave those states and migrate to states such as Nebraska where we have fewer restrictions. South Sioux City, which is located in my district, was directly affected by the increase in sex offenders moving to our state. Chief Scot Ford, the police chief from South Sioux City, is here today and will testify in support of this bill. Essential predator is defined in the current law as an individual (1) who is required to register under the Sex Offender Registration Act, and (2) who has committed an aggravated offense as defined in Section 29-4001.01, and (3) who has victimized a person 18 years of age or younger. The same parameters in the current law are included in LB508. The restriction would not apply if the sexual predator had (1) established a residence before the effective date of this act and has not moved from that residence, or (2) established a residence after the effective date of this act and the park triggering the restriction was established after the initial date of the sexual predator's residence at that location. The restriction does not apply to a sexual predator who resides within a prison, a correctional facility, or a treatment facility operated by the state or a political subdivision. Senator Loudon came to me and asked if I would consider amending the bill to include nursing homes in the places where the predators could live, and that has to do with the nursing home that exists in Hemingford, Nebraska, which is within 500 feet of a park. I agreed to mention the suggestion to the committee and let you guys decide if you think that needs to be added. Most offenders will serve their time and be released in various communities. They must live somewhere and we all understand that. It is my attempt with this bill that we do at least something to restrict people who have harmed children in the past from areas where children congregate and play. I see my bill, LB508, as having some relationship to Senator Krist's bill, LB284, the bill that does not allow protesters within 500 feet of a cemetery, mortuary, church, or other place of worship at the time of a funeral or a memorial service. I'm asking that the same distance be maintained between children and sex offenders who would do them harm as we've mandated for funeral protesters and grieving families and friends. I realize that, much like the protesters, we cannot stop

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sexual predators from living in Nebraska. We can and should, however, add what protection we can to keep our children safe and secure. And that's about all I've got to say and I'll answer any questions I can. [LB508]

SENATOR ASHFORD: Thanks, Dave. Any questions? I don't see any. Thank you. [LB508]

SENATOR BLOOMFIELD: Sounds good to me. [LB508]

SENATOR ASHFORD: You did just fine for your first time. That must be a record, one bill. [LB508]

SENATOR BLOOMFIELD: Yeah. [LB508]

SENATOR COASH: Very wise. [LB508]

SENATOR ASHFORD: Okay, how many proponents do we have for this bill? How about opponents? All right. Chief Ford, good to see you again. [LB508]

SCOT FORD: Thank you, sir. Good to see you. My name is Scot Ford, S-c-o-t F-o-r-d, short and sweet, and I'm here today representing the city of South Sioux City in support of this bill. Again, we look at this as a public safety issue, and particularly a child safety issue. Sexual predators as opposed to sexual offenders are an entirely different class, and part of that classification deals with the likelihood of reoffense, a stronger likelihood of reoffense. And we feel that it is imperative that we do everything we can do to keep that distance between sexual predators and our children. We don't want our parks to become a hunting ground. We want them to be a place where our parents and our children feel safe and the parents don't feel that they have to be constantly on guard watch while the children are recreating. And this is just a tweak, just an addition, a small addition to the existing statute that we feel is important in most communities to help keep our children safe. And as an editorial side note, just an appreciation, the change in the sex offender legislation that took place where we did away with the levels: for one, I appreciate that. I think that this makes it a much easier to manage sexual offenders as opposed to sexual predators. It draws a much clearer distinction. And I think that from a law enforcement perspective, it makes it much clearer what we're dealing with as opposed to trying to gradient effect of sexual offenders. So, I do appreciate that. And with that, I thank you for your time, and I will answer any questions you might have. [LB508]

SENATOR ASHFORD: Yes, Senator Coash. [LB508]

SENATOR COASH: Thank you, Chairman Ashford. Thank you, Chief. You mentioned that there's a difference between an offender and a predator. [LB508]

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SCOT FORD: Correct. [LB508]

SENATOR COASH: Is that a difference identified in the law? [LB508]

SCOT FORD: The difference is the type of crime committed, and particularly the predators' crimes are crimes against children or crimes against those who are incapable of caring for themselves, and repeated crimes. [LB508]

SENATOR COASH: Does LB508 specifically address predators or...? [LB508]

SCOT FORD: LB508 specifically addresses predators. It deals with predators. [LB508]

SENATOR COASH: Okay, so my question is, if I knew someone who had committed a sex crime and was on the sex offender registry, if I...you know, if I could look up that person, because that's...and it's all public now, I mean... [LB508]

SCOT FORD: That's correct. [LB508]

SENATOR COASH: ...no matter the level of offense or likelihood to reoffend, I guess, is what we took care of last year. If I look someone up on that, is that going to tell me whether or not that they are an offender versus a predator? [LB508]

SCOT FORD: I'm not sure exactly how it is worded, but I believe there is a distinct separation. Part of that will be with the length of time required to be on the registry. Predator... [LB508]

SENATOR COASH: Okay. I'm getting a lot of shaking heads here saying that I don't...that you can't tell. And I'll do my own due diligence to figure that out. [LB508]

SCOT FORD: Okay. [LB508]

SENATOR COASH: Can law enforcement tell? [LB508]

SCOT FORD: Law enforcement generally can tell. [LB508]

SENATOR COASH: As law enforcement, if you look somebody up, can you tell the difference? [LB508]

SCOT FORD: Law enforcement generally can tell again by the length of time they're required to register. Sex offenders are not always required to register lifetime. Predators are required to register lifetime. [LB508]

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SENATOR COASH: Okay. Okay. I think there's still...and I understand what Senator Bloomfield is trying to do here. I just want to make sure that the policy, whatever it is that we might put forward, is clear so that it addresses...I mean, it seems like Senator Bloomfield wants to address the predators, the ones who are maybe based on their victim or their crime or likelihood to reoffend, I understand. I believe it's his intent to keep those folks out of parks, which in your testimony you said those are predators, which is different than an offender. Okay. And so I'm trying to figure out how this bill differentiates between the two and if it's clear enough both for the offender who would need to comply with this law, but also for law enforcement who would have to enforce it. So that's why I'm just trying to figure out what kind of information is out there with regard to the differences between offenders and predators, because that is the statutorily defined...you know, if that is a statutorily defined classification and...because we have to make sure that this is an enforceable law from that perspective. Thank you. [LB508]

SENATOR ASHFORD: I don't see any other questions. Thanks, Chief. [LB508]

SCOT FORD: Okay. Thank you. [LB508]

SENATOR ASHFORD: Gary. [LB508]

GARY KRUMLAND: (Exhibit 9) Senator Ashford and members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, appearing in support of LB508 on behalf of the League of Nebraska Municipalities. I want to thank Senator Bloomfield for introducing the bill. The sexual predator residency laws require a balancing. You have to be strict enough to provide public safety but also not so strict that it completely eliminates any chance of residency. So there is a balancing and we think Nebraska has a pretty good law in that regard. The policy is that the residency law is to restrict residency in the areas where children congregate. Right now it includes schools, and it includes day-care centers. We think parks is another part of that that would be appropriate because that is also where children congregate. The handout I gave is basically the existing law and it's my answer to some of your questions, Senator Coash. The law as defined in the statutes right now, so it's not being changed by LB508, but the current law is on page 2, lines 21, and defines sexual predator. It has to have three things. One is, it has to be an offense that requires registration under 29-4003. It has to be an aggravated offense as defined in 29-4001.01, and the victim has to be 18 years or younger. So it has to meet all three of those criteria before a person becomes a sexual predator. And that is what the current law is now, and I guess basically has been since the Legislature, I think it was in 2009, changed the definition of sexual offender. There are states, like Iowa has been mentioned, that have much more restrictive statutes. I think they have 2,000 feet. That's caused problems in Iowa because it's very difficult to find a place in Iowa to reside. That's caused problems in Nebraska because when that laws passed, several people moved over to Nebraska, and so we're getting...like South Sioux City did experience some additional registered offenders

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moving into the state. I think Nebraska has a more balanced approach but we do think adding parks would add to public safety. For that reason, we support the bill. [LB508]

SENATOR ASHFORD: Thanks, Gary. Yes, Senator Coash. [LB508]

SENATOR COASH: Thank you, Chairman. Gary, as somebody who works with the municipalities across the state and, you know, from Senator Giese two years ago, and (inaudible) Senator Bloomfield, I know that they're struggling with an issue because of their proximity to Iowa and what Iowa has done with a lot of their laws. Are you aware of other communities where this is a problem? I mean, I...Senator Bloomfield has got a problem. I'm just curious if this is more of a statewide problem. [LB508]

GARY KRUMLAND: Yeah. I don't have...we haven't done a survey or statistics, but I know when the law first passed in 2006, we had requests from cities and villages across the state for model ordinances so that they can look at adopting it. And I think quite a few cities across the state have adopted it. When this proposal was suggested, it went through some of our legislative committees where it had representatives from villages and cities across the state. They were all in support of this proposal. So if it's not a problem like South Sioux City has, it is a perceived problem and in at least some areas they do think it is a problem, so. [LB508]

SENATOR COASH: All right. Thank you. [LB508]

SENATOR ASHFORD: I don't see any other questions. Thanks, Gary. [LB508]

JON EDWARDS: Good afternoon, Chairman Ashford and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, here representing the Nebraska Association of County Officials in support of LB508. I think you've heard all the details of the bill. I just believe that this would provide another tool within statute for those political subdivisions if they so believe that this is a need, that they then have the tool and the ability to provide for this restriction. And so with that, I'll conclude my testimony. [LB508]

SENATOR ASHFORD: I don't see any questions. Thanks. [LB508]

JON EDWARDS: Thank you. [LB508]

SENATOR ASHFORD: Next proponent. [LB508]

VALERIE OAKLEAF: Good afternoon, Senator Ashford and committee. My name is Valerie Oakleaf, that's V-a-l-e-r-i-e, last name O-a-k-l-e-a-f. I am here representing the village of McCool Junction and most of the smaller communities in the...at least the southeast end of the state. My reason for being here is strictly for the communities that no longer have schools because they've been closed due to consolidation, or

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communities that are small enough that they may not have an active day care, licensed day care, but do have a park. There are several small communities in this area that do not have either of the first two, and this would definitely help in keeping the children safe in the smaller communities because most small communities do have a park of some sort. And it allows them to be able to keep the children safe to go and play in the park, at least, where they may not have that restriction elsewhere. [LB508]

SENATOR ASHFORD: Thank you for your comments. Any questions? Seeing none, thanks for coming up. [LB508]

VALERIE OAKLEAF: Thank you. [LB508]

SENATOR ASHFORD: Next proponent. Do we have any opponents? Brian. [LB508]

BRIAN KITT: Senator Ashford and the Judiciary Committee. My number one concern with this is, does... [LB508]

SENATOR ASHFORD: Give us your name for the record. [LB508]

BRIAN KITT: Oh, I'm sorry. My name is Brian Kitt, K-i-t-t. My biggest concern with this, has anybody have any studies showing whether or not residency restrictions actually do any good? I know this is a feel-good law and we think it does some good. But I need you to ask yourself, is it legal right now for a man to go molest a child? Does anybody think it's legal for a man to molest a child? So if a person is already willing to commit a felony to molest a child and to commit one of the most abhorrent crimes in our culture, would that same person, do you think where they live makes a difference? Do you think where a person spends six hours of their 24-hour day, does that really make a difference? If I'm a...and I'm not, but let's say I'm a sexual predator, let's say I live in Omaha, but now I work in Lincoln. Okay. There is a dozen small communities between Omaha and Lincoln, and if I'm a sexual predator, and if I'm so proposed to do something like that, this law is nothing. There is study after study after study that shows these residency restrictions do no good. A sexual predator only sleeps in his residence. Look at some of the big profile cases. Let's look at Jaycee Dugard out of California. Everybody is familiar with that case. Phillip Garrido drove four hours out of his way. He drove for four hours to find a victim. Does anybody think where he slept made a difference? He lived in the middle of nowhere. Let's look at Michael Devlin out of Missouri. He kidnapped and held one boy for nearly seven years. He kidnapped and held another boy for several days before he was busted. He took those in two different counties, miles and miles away from his home. He could have had a 2,000-foot residency restriction, it would have made no difference. Let's look at John Couey: Jessica Lunsford out of Florida. He was on a burglary spree. He was burglarizing houses. Broke into her house at 3 in the morning. Does where he live would have made any difference? Let's look at Dru Sjodin out of Michigan. She was a college student. The

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man that abducted her lived several hours away in a different state. Would any residency restrictions have made any difference? The point I'm trying to make is, these residency restrictions don't work. They don't do anything. It's already a felony for a person to commit these crimes. If a person is willing to commit a felony, to commit these crimes, the residency restrictions make no difference. And with that, I'll end. [LB508]

SENATOR ASHFORD: Any questions of Brian? Seeing none. Thanks, Brian. [LB508]

BRIAN KITT: Thank you, Senator. [LB508]

SENATOR ASHFORD: Any other opponents? [LB508]

KAREN KEMPF: Senator Ashford and committee, my name is Karen Kempf, K-a-r-e-n K-e-m-p-f, and I'm here representing, you might say, my grandson who is convicted as being a sexual predator. And I'm concerned because I fail, like the former person who has testified, to see how all these restrictions do anything at all to stop sexual predators. And there are levels of sexual predators. My grandson was convicted of a Class IV felony and he was, on his risk assessment, evaluated as unlikely to repeat this offense. What happened when he was in high school, he started at the age of 17 to download files on the Internet and they were of a sexual nature. By the time he was discovered he was 18; by the time he went to court he was 19, and so he was convicted as an adult. And you talk about, are there different time lines that are involved? He has to be on the registry for 25 years for simply looking at pictures when he was a young man. Twenty-five years he has to be on that registry. If you keep restricting and restricting where people can live, okay, if you make concentric circles around every one of these places where they can live, where else are they going to find places to live? It also curtails their ability to get employment, and they have a lot of costs involved. They have to pay court costs. They have to pay for their evaluations and their ability to get assessments. There are just an awful lot of costs involved. So far, the only job he's been able to get is as a delivery boy for the newspaper. And so he's been seeking employment, and all of these restrictions for a young person make it very difficult to be employed, much less find a place to live. And I think that he definitely is a person who should be considered to be not as...and I...he shouldn't be a 25-year person, I guess is what I'm saying. But that's not what's before you today. What's before you is, where is he going to live? And I think that...also there are children who congregate in the malls, children who congregate in the movie theatre, children who congregate in many other places, and where is it all going to stop? Thank you. [LB508]

SENATOR ASHFORD: Thank you, Karen. Yes, Senator McGill. [LB508]

SENATOR MCGILL: I just wanted to thank you for coming in and testifying. I can see this is an issue that's important for your family and I also am concerned that everyone is being lumped together. So the worst of the worst are being lumped with some other

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folks. And even the case of a 19-year-old who is dating a 15-year-old and ends up on the registry for 25 years, I think that's different than someone who is 19 molesting a 3-year-old. [LB508]

KAREN KEMPF: Exactly. [LB508]

SENATOR MCGILL: And so I have some serious concerns about that. I mean I think if we were going after the ones who were 19 molesting a 3-year-old, then I'd be happy to keep them away from a park. But we have a lot of other levels in there that I'm concerned about. [LB508]

KAREN KEMPF: Thank you. [LB508]

SENATOR ASHFORD: And let me, Karen, could I just, just... [LB508]

KAREN KEMPF: Yeah. [LB508]

SENATOR ASHFORD: ...I don't want to delve too deeply into the case. I get your point. But was your grandson convicted under the prior sex registry law, and then when the new law passed he was then registered for 25 years, is that how it happened? [LB508]

KAREN KEMPF: No. [LB508]

SENATOR ASHFORD: So it was the new law that he was convicted under? [LB508]

KAREN KEMPF: It was the new law. He accepted a plea agreement this last year. [LB508]

SENATOR ASHFORD: So, okay, it was after the new law passed then. [LB508]

KAREN KEMPF: After the new law passed. And as a person who downloads things off the Internet, it's my understanding that that carries with it many laws that come into play that are over and above the usual. And so because it goes across state lines and many other things that he could have been convicted of, many other more serious things, and so he accepted a plea agreement. [LB508]

SENATOR ASHFORD: Okay. Thank you, Karen, for coming down. Any other testifiers on this bill? [LB508]

\_\_\_\_\_: Neutral? [LB508]

SENATOR ASHFORD: One second here. I think we have another opponent. You're an opponent, ma'am, is that correct? You're against the bill? Okay. Thank you. [LB508]

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DEBBIE WILBUR: My name is Debbie Wilbur and I'm from the Hastings area over by Nelson. And I don't know how to share this without tearing up because it's pretty sad. I have a friend, Justin, and I've known him for several years, and it's kind of a story just like what the lady just shared. I met Justin, I don't how many years ago, probably four or five years ago. He's here also. And how I met him is, I guess, going to church. He started living in his car because he was in a sting on the computer by looking at pictures on the computer, and got in a sting with looking at pictures and became labeled a sex offender and ended up in trouble with that. And got labeled a sex offender and had to become registering wherever he moved, wherever he lived, even living in a car. He couldn't...he had to go to the sheriff and register wherever he parked his car or lived. He couldn't get an apartment. He still doesn't have a job to this day. And when he started coming to the Seventh-day Adventist Church, we had to help him, put him up in the back. There was a building behind our church and we had to put him in the back building because he had no place to live. Because he was living in the car in the wintertime, we gave him shelter to live for so long, and he had no job and he still doesn't have a job, and there have been people tormenting him. And when he did get a place, he got evicted. And he had people that would bang on the walls, and when we were helping him at the Salvation Army...or not Salvation Army, the church, there was people that would come over and take a piece of wood and bang on the walls. And so he would call me and we would call the cops. And when the cops would come, they'd try to help and they'd say, well, there's nothing we could do. And so, I don't know, he's going to talk too. He wants to talk too. But this is going on. People are going through this. And I disagree. I don't think they should be...he's got to do register for 25 years also. And I just don't think it's right because he's never done anything. I mean, he looked at a picture and that was it. And I disagree with what the law is doing now to those people that hasn't actually done anything. I don't know if anybody has got any questions, but anyway. [LB508]

SENATOR ASHFORD: I don't know. I don't see any, but I appreciate you coming to tell us the story. Thank you. Yes, can you give us...I'm sorry, could you give us your full name. [LB508]

DEBBIE WILBUR: Yeah, Debora Wilbur. W-i-l-b-u-r. [LB508]

SENATOR ASHFORD: Okay. If you have time, would you fill out one of our forms on that table there? [LB508]

DEBBIE WILBUR: Sure. [LB508]

SENATOR ASHFORD: Okay. Does anybody else want to talk on this bill as an opponent? [LB508]

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TERESA KEMPF: Yes, my name is Teresa Kempf, T-e-r-e-s-a K-e-m-p-f, and I am the mother of this sex offender. Like I say...that was my mother-in-law. He's on the registry for 25 years, and I don't believe it makes a clear distinction on the registry as to what offense he actually committed. And I know--I've looked at the registry--there's people on there for 15 years that actually hands on assaulted a child. And he got 25 for looking at a picture on the computer, so. And I...you know, I'm against this because you were strict where they live, you know, you're strict...you take them out of the community, possibly away from their support system and their families, and they need that to get past this. And so I guess that's all I have. [LB508]

SENATOR ASHFORD: Well, thank you, Teresa. Do we have any questions? I don't see any, but thank you. Anyone else wish to testify against this bill? Neutral? Someone raised... [LB508]

STEVE KLINE: (Exhibit 10) Senator Ashford and members of the Judiciary Committee, my name is Steve Kline, S-t-e-v-e K-l-i-n-e. I am the board president and the executive director of Families Affirming Community Safety, Inc., a 501(c)(3) nonprofit in Nebraska. I just want to provide the committee with some neutral information. The Bureau of Justice statistics in 2004 tracked 9,700 sex offenders, offenses against children. Seven percent of those crimes were perpetrated by strangers. Ninety-three percent of those molestations, which are horrific, were not committed by strangers but by people who are known and trusted by the family. These molestations do not occur in public parks. Throughout the last decade, other arrest studies have found similar results. These molestations are committed by a family member or a guardian, someone who is trusted, a parental substitute. It might be a trusted uncle, a father, a stepfather, a mother, a family friend, a teacher, a coach, or a priest. Now if we keep in mind that 93 percent of the culprits are family or known to the family, and that 95 percent of sex offenders who are caught do not reoffend, then it would seem that registries, residency restrictions, restrictions in parks, tracking of individuals, will not make our communities any safer. Families Affirming Community Safety is vitally interested in making our community safer, and we would urge the committee to look into statistics like this and make sure that your actions are premised on factual information. Make sure that your actions will indeed make our community safer. I'd also like to quote from the Winter 2007 Public Safety Brief of the Council of State Governments, this is a project of the United States Department of Justice. "Offense-based categorization has several inherent problems. Most notably, that the crime for which an offender is charged may not reflect the seriousness of the underlying offense. Many lower risk offenders could potentially be erroneously classified as high risk and publicly identified while dangerous offenders with more favorable court outcomes will have fewer limits placed upon them. There is no empirical research that indicates the crime of conviction is related to the risk of recidivism." That goes directly to the point that's at issue here in front of us. The state of Nebraska has instituted a system that makes it impossible for us to accurately define a predator. And we would urge the committee to take that into consideration. [LB508]

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SENATOR ASHFORD: Thank you, Steve. Yes, Senator Coash. Steve, could... [LB508]

SENATOR COASH: Mr. Kline, was that really neutral testimony? [LB508]

STEVE KLINE: Those are the facts. [LB508]

SENATOR COASH: Are you okay if we pass this bill? [LB508]

STEVE KLINE: Am I okay if you pass this bill? [LB508]

SENATOR COASH: Is FACTS okay if we pass this bill? [LB508]

STEVE KLINE: FACTS can't be okay or not okay if you pass that bill. FACTS would like to have you take into consideration the facts before you pass that bill. [LB508]

SENATOR COASH: Okay. [LB508]

SENATOR ASHFORD: Thank you, Senator Coash. Any other neutral testifiers? That concludes the hearing. And Senator Bloomfield, would you like to close for us? [LB508]

SENATOR BLOOMFIELD: Thank you, Senator Ashford and committee. Senator Coash, the language in my bill is identical to the language that is used to currently protect the schools and the day-care centers. It's identical. All we're doing is adding parks. And as far as the people that drive great distances to do harm to children, we can't protect them from everybody. It's a nice fairy tale that all children grow up in nice safe places. We can't protect them from everything. I do think, however, allowing these folks to actually live next door, right against the fence virtually, where the children gather to play, is a mistake. Awhile back I spoke with the city administrator, Lance Hedquist, out of South Sioux. He said before Iowa passed their more restrictive laws, they had fewer than six sexual predators living in South Sioux and it has now over 20. It is a problem. I don't know what the numbers are in Omaha. I'm sure they are available. I would assume you're seeing a migration into Omaha too. And again, we can't protect them from everybody; let's protect them from those that we can. Thank you. [LB508]

SENATOR ASHFORD: Thanks, Dave. Just a second though. Senator Coash has a question. [LB508]

SENATOR COASH: Senator Bloomfield, I'm glad you closed because I have another... [LB508]

SENATOR BLOOMFIELD: Should have kept my mouth shut. I'll learn that some day. [LB508]

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SENATOR COASH: No, I want to dig in...I'll just ask you to speak to the problems in your community. Is the problem where the sex offenders live in...or is the problem that they go to the park? [LB508]

SENATOR BLOOMFIELD: I don't have a defined answer to how many of them are living within the 500 feet of the park, if that's what you're looking for. The problem is that they are moving to Nebraska and that we have...South Sioux City, in particular, has several large parks where a lot of kids congregate to play and there are places close to those parks where they can live. [LB508]

SENATOR COASH: The reason I asked is, you've added parks to the residency, and I'm just wondering if the problem that South Sioux is experiencing is a sex offender who lives near a park, or if a problem is that a sex offender goes to the park. And I'm just...I'm trying to explore whether or not it makes...maybe it would make more sense to restrict going to the park regardless of living or...you see what I'm saying? I would like to see the bill address the problem, and if the problem is sex offenders going to the park, that is inappropriate. A predator shouldn't go to a park. But I'm just asking, if we're trying to get...do you see what I'm trying to get at? [LB508]

SENATOR BLOOMFIELD: I see where you're trying to go, but... [LB508]

SENATOR COASH: Maybe we restrict them from going to the park instead of living next to one. I don't know. [LB508]

SENATOR BLOOMFIELD: What I see, and I have not really looked at it in that exact light, I don't know how we could...you know, are we going to stop everybody that's headed toward the park and check to see if they're on that registry list? I don't think we can do that. We can restrict where they live. I don't think we can stop them from going to the park. And that goes back... [LB508]

SENATOR COASH: Sure we could. Or we can make it illegal, we can't stop them. [LB508]

SENATOR BLOOMFIELD: We can make it illegal and like the other gentleman said, it's already illegal to molest a child. I don't know that that additional misdemeanor or felony, whatever it would be, would stop them. What I'm intent to do with this bill is to keep them from sitting up there looking out the bedroom window wishing they could... [LB508]

SENATOR COASH: Is that the problem you're dealing with in South Sioux? [LB508]

SENATOR BLOOMFIELD: I think that's part of the problem. I don't...Chief Ford probably could have answered that better than I can, but I will find out and I will talk to you about

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it. Okay. [LB508]

SENATOR COASH: I understand. Thank you, Senator. [LB508]

SENATOR ASHFORD: Senator McGill. [LB508]

SENATOR MCGILL: Do you know if any of them that have reoffended in any sort of way? So the numbers of sex offenders has gone up, but have they reoffended? [LB508]

SENATOR BLOOMFIELD: Again I don't have those numbers. Chief Ford probably would have. [LB508]

SENATOR MCGILL: Okay. Sorry. [LB508]

SENATOR BLOOMFIELD: I will check and get those for you. I know there are a high rate of recidivism amongst sexual offenders. I don't have the... [LB508]

SENATOR MCGILL: Well, the details in here counter that, and so I need more information in general. But it's the type. I think it goes down to the type of sex offender. And like you heard, my concern is that right now we clump a lot of sex offenders together. If it was just the worst of the worst, those who are really preying on 5-year-olds, I totally agree with you. [LB508]

SENATOR BLOOMFIELD: And I don't know that we...I know that testimony was made that men and 5-year-old girls...I think we need to look at 17-year-old boys and girls too. [LB508]

SENATOR MCGILL: Okay. [LB508]

SENATOR BLOOMFIELD: And I will get those numbers for you. [LB508]

SENATOR MCGILL: All right. Thank you. [LB508]

SENATOR ASHFORD: (See also Exhibits 5 and 8) Thank you, Dave, very much. [460]

SENATOR BLOOMFIELD: Thank you. [LB508]

SENATOR ASHFORD: The next bill is LB460. This bill is a very technical change to the sex registry law. What I have indicated to people is that I will allow testimony on this bill that is more general in nature and that goes to the issue of the sex registry law in general, those who have called. So in that regard...let me ask this. How many are here that want to testify on this bill? Okay. Just on the bill. Well, who wants to testify? This is the only thing left to testify on, so how many intend to testify? Okay. And that's on

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proponents and opponents, is that correct? Okay. So what I will do, this is slightly unusual, but I have indicated to people who have called that I would allow testimony in a more general sense. It's not necessary to talk about the technical nature of this bill. So I'm going to go ahead and introduce it; then we'll open it up for proponents and opponents. My thought would be, if you are someone who is opposed to the sexual registry law or has questions about the sexual registry law, what I would recommend is that you testify in opposition to this bill. Okay. So with that, I will open the testimony. [LB460]

SENATOR ASHFORD: (Exhibits 13 and 14) Good afternoon, Senator Lathrop and members of the committee. For the record, my name is Brad Ashford. I represent the 20th Legislative District and I'm here to introduce LB460. LB460 is a bill that would correct a problem with our sex offender registry requirements that was identified by the Nebraska Court of Appeals in the case of State v. Frey decided last year. In the Frey case, the Nebraska Court of Appeals overturned a conviction of a person required to update their personal information as required under the Sex Offender Registration Act, specifically the changes made by LB285, which this committee advanced and the Legislature adopted in 2009, that requires that a person on the registry provide information pertaining to a new address within three days of that change of address. The Court of Appeals overturned the conviction because the Legislature did not define what constituted a change of address. It is believed that the problem will be remedied by changing the term "address" to "residence," as that is a judicially recognized term in prior case law. Staff in my office have discussed this change with representatives of the Attorney General's Office and the State Patrol, and both offices indicated that the change, in their opinions, would correct this technical problem. I also offer AM794, which provides that the definition of residence shall mean bodily presence, quote, bodily presence as in an inhabitant in a given place, which is a Black's Law Dictionary definition. With that, I would close. [LB460]

SENATOR LATHROP: Very good. Thanks, Senator Ashford. [LB460]

SENATOR ASHFORD: Senator Harr. [LB460]

SENATOR LATHROP: Senator Harr. [LB460]

SENATOR HARR: Thank you, Senator Lathrop. Senator Ashford, I appreciate the change. I don't know if this addresses my main concern or one of my concerns, and that is, how do we handle registered sex offenders who are homeless? [LB460]

SENATOR ASHFORD: And you've raised that issue before, Senator Harr, and that's a good question. I don't have an answer for you. I mean I think it's something we need to discuss. I should have had one for you because it's a question you've asked me before, but I don't have an answer for you. [LB460]

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SENATOR HARR: Thank you. [LB460]

SENATOR LATHROP: That looks like all the questions. Do you want to close, Senator Ashford? [LB460]

SENATOR ASHFORD: I'll waive closing. [LB460]

SENATOR LATHROP: All right. Okay. Okay. Proponents for LB460, if any, please come forward. Anybody here to testify in favor of LB460? Seeing none, anyone here in opposition to LB460? And let me ask how many people are here to testify on this bill? Okay. Let's take up the proponent...or opponents, pardon me. Go ahead. [LB460]

BRIAN KITT: Thank you. I promise this is the last time you'll see me today. [LB460]

SENATOR LATHROP: We're out of bills. [LB460]

BRIAN KITT: (Exhibit 11) Yep. Should I wait until he's done? Okay, I'm sorry. My name is Brian Kitt again. My concern is more that the sex offender registry has gone too far. I'm sorry, I must have left my notes down there. Is there a loose pack in there? I'm sorry. My big concern is that the sex offender registry has gone way too far already and LB460 needs to be modified to correct many of the wrongs with the sex offender registry. I'm on a sex offender registry for the rest of my life. I have never touched a minor. I did not start dating until I was 19 years old. I have never touched a minor in my life. I have never chatted on the Internet. I have never called a minor. I have never talked dirty to a minor. I have never done anything with a minor. I'm a sex offender for the rest of my life because I made a judgment error when I ordered an adult video. I didn't realize I was getting child porn. I made a simple judgment error on what I ordered. I made a mistake and I own up to my mistake. But I'm on the sex offender registry for the rest of my life for making a judgment error on what I ordered off the Internet. It was a controlled sting by the FBI. I never even viewed a tape. I can honestly look you in the eye and tell you I have never viewed child porn in my life, but I'm on the sex offender registry for the rest of my life for child porn. I have never viewed child porn. The sex offender registry is so out of control. An Allegan County Circuit Court Judge, Kevin Cronin, called a listing on a sex offender registry equivalent to the death penalty, and this is no understatement. I've been on a sex offender registry since 1997 and it is equivalent to the death penalty. I have to explain this to every employer I go to. I try...I'm a computer guy. I try to get a job with an employer. I'm like, hey, you know, hire me, except I'm a sex offender. Every employer looks at me and says, I can't take that risk, I can't risk having a sex offender on my staff; if anything were to happen, I would get sued. And I'm saddled with this for the rest of my life. This has become a modern-day witch trial. There's a book here. Anyone dealing with sex offender registry should be required to read this book. It's called Justice Perverted. It's a book about the wrongs

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that are being done on the sex offender registry. There's a common quote that children are our most precious treasure. Let me read you the entire quote: The state must declare the child to be the most precious treasure of the people. As long as the government is perceived as working for the benefit of the children, the people will happily endure almost any curtailment of liberty and almost any deprivation. It is truly heartwarming to see how well this lesson has been learned by the American government. In the name of children, incursions into the private lives of American citizens have been made that we Nazis would have gazed at with open mouth admiration. That was written by Adolf Hitler. Our country, with the sex offender registry, is following in the lines that were drawn out by Adolf Hitler. In my presentation, I've included a lot of documentation addressing the common myths of the sex offender registry. We hear over and over and over that sex offenders are the highest recidivism in the country of any crime. But why is it that the Department of Justice, who should be the controlling authority for these figures, the Department of Justice says more than 90 percent of all sex crimes are done by people with no criminal record or no sexual record? Ninety percent of all crimes are done by people with no record yet we hear it's the highest recidivism rate of any crime? I've included all these documents. I please ask that you look through this. A lot of these are myths that have been debunked. We hear about the 100,000 absconded sex offenders. A study was done; there's only 1,700 in the entire United States. I wish I had more time. I was a little bit unorganized coming up here, I'm sorry, so I'll have to close with that. [LB460]

SENATOR LATHROP: Thank you. Any questions? [LB460]

BRIAN KITT: Yes, ma'am. [LB460]

SENATOR LATHROP: Senator McGill. [LB460]

SENATOR MCGILL: Just real quick, for certain cases I would think that you'd agree that there needs to be a sex offender registry... [LB460]

BRIAN KITT: Oh, absolutely. [LB460]

SENATOR MCGILL: ...or for a shorter period of time for different sorts of... [LB460]

BRIAN KITT: I agree... [LB460]

SENATOR MCGILL: Yeah. [LB460]

BRIAN KITT: ...there are some real monsters. Let's just take a local case. [LB460]

SENATOR MCGILL: Yeah, there really are. [LB460]

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BRIAN KITT: Roy Ellis, who raped and murdered Amanda, I'm sorry, Amber Harris. [LB460]

SENATOR MCGILL: Uh-huh. [LB460]

BRIAN KITT: That man was a monster. I absolutely have no sympathy for a monster like that. That's the minority. How many people are on the sex offender... [LB460]

SENATOR MCGILL: Or there's so much...like most families, I know, if you really talk to them, there's been some sort of molestation within their family. That's the dirty secret that no one talks about. [LB460]

BRIAN KITT: Right. [LB460]

SENATOR MCGILL: I do think most of it is people that you know, generally speaking. [LB460]

BRIAN KITT: Right. And how many people are on the sex offender registry for doing...and let's take my case. I had a porn problem. I'll admit that to anyone who asks me. I was collecting porn off the Internet. I was obsessively collecting porn off the Internet. I had a problem with obsessively collecting porn. I needed therapy, absolutely I needed therapy, but I wasn't interested in children. I was just obsessed with downloading pornography off the Internet. The Internet was new, big thing, cool, wee, just whatever, and I got out of control. What I did, in my opinion, shouldn't have been a felony. I should have been required to take therapy. I should have been put into therapy for it, which I was. But a felony for making a judgment error on a video that I ordered? [LB460]

SENATOR MCGILL: Thank you for testifying. [LB460]

BRIAN KITT: Yes, sir. [LB460]

SENATOR LATHROP: Senator Harr. [LB460]

SENATOR HARR: Thank you, Senator Lathrop. Just quickly, so under the Sex Offender Act, have you always been required to register? [LB460]

BRIAN KITT: That's an interesting question. [LB460]

SENATOR HARR: And what I'm getting at, was there a change recently in what you are required? [LB460]

BRIAN KITT: Yes. I'm so glad you asked that question. When I was convicted, my crime

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was back in 1996, so we're talking about something I did 15 years ago. My crime as in 1996. When I was sentenced, I was not required to register as a sex offender. That was not something that was on the books. That was not part of my plea deal. I realized I had a problem with pornography and I wanted to take responsibility for my problem, so I pled guilty to my crime because I knew I had a problem. I knew I was out of control. I wanted to get help. They retroactively came to me and said, oh, by the way, Brian, we never told you this before but you're going to register for a sex offender for ten years. I immediately called my attorney and I tried to appeal my case and he said, Brian, it's no big deal, it's a piece of paper, you'll never go on the Internet, you'll never go on the Internet, you'll never be required to do anything, you've got no restrictions, it's just a form you fill out once a year, it's no big deal, for ten years. Okay, well, now I'm a lifer. I made a list of all the restrictions I have. I can't use FEMA's storm shelters. I can't travel without prior approval. I can't stay in a hospital overnight with my children without registering at the hospital as a sex offender registry. I'm barred from...or I could be barred from living with my children. At the time, I'm not. I'm barred from gyms. I can't go to the YMCA anymore. I'm barred from my children's events. I have three kids in school. I can't go to their events. I have a cease and desist order from the school. I'm barred from going to many tourist destinations. I can't go to Florida without jumping through all kinds of hoops, and if I go to Florida, I'm given an entire list of places it is a felony for me to go to. I'm barred from public parks. I'm barred from student loans and continuing education. I'm barred from any scholarships. For child safety, I can't get an FHA loan. For child safety, I can't get a small business loan. For child safety, I'm barred from tax credits that have to do with energy efficiency. [LB460]

SENATOR MCGILL: Huh. Well, thank you. [LB460]

BRIAN KITT: I mean I could go on and on. It's out of control, all this because I made an error in judgment and this is for the rest of my life. [LB460]

SENATOR MCGILL: And for retroactive... [LB460]

BRIAN KITT: It was all retroactive. [LB460]

SENATOR MCGILL: Yeah. [LB460]

BRIAN KITT: Everything done to me is retroactive. And Jon Bruning gets on the public radio and says, oh, being on the registry is no big deal, it's not a big deal, just tell people you're not a threat, it won't be any big deal. I could sit here for another half an hour and tell you all the harassment I have gotten since 2010. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR HARR: Thank you. [LB460]

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BRIAN KITT: Thank you. [LB460]

SENATOR LATHROP: Next opponent, please. [LB460]

CORY RICHMOND: (Exhibit 12) My name is Cory Richmond, R-i-c-h-m-o-n-d. I live here in Lincoln. September 1995, I was 21 years old, met a girl, she lied about her age, was convicted of...well, the legal description is sexual assault of a child in, I believe, the third degree, commonly known, too, as statutory rape. I got sentenced to three years' probation. There was no such thing as a sex offender in 1995. Actually pled guilty in July of 1996. My handout actually has a time line, which I encourage you to look over. I'm actually here today to tell you, I'm married. I've been with my wife for 13 years, have a 6-year-old who's in kindergarten, have a 3-and-a-half-year-old son. I'm here today to tell you a story about how my 6-year-old lost her best friend once I went on the Internet here in January of 2010. I was a level I, so my picture was not on the Internet. Only law enforcement knew I was a sex offender. I had to register addresses when I moved. As Brian said earlier, it was simple. For ten years I just simply filled out a piece of paper, it came in the mail, mailed it back in. A neighbor moved in across the street two years ago. She was a single mother, has a 4-year-old daughter. At that time, my daughter was 5. She actually made mention to us, she was mid-20s, that she actually looked on the sex offender list before she bought the house across the street from us to make sure there are no sex offenders in our neighborhood, which at that time I was not on the list. Well, then we fast-forward to the new provisions that took effect in January of 2010 and now my picture from 1995, I add, was actually still being used on the Internet and they...the story is...I'm going to try to keep it really short, but her ex-husband moved into town and she encouraged her ex-husband to use the registry in April of 2010 to look for an apartment and make sure there's no sex offenders in the apartment complex. Well, he ends up calling her back and says, well, there's none here but there's one across the street from you. And she says, no, I checked when I moved here. And she got on the Internet and looked and, lo and behold, here her neighbor across the street, that her 4-year-old has been playing with my daughter for the last two years, is a sex offender. Well, her ex-husband told her that his daughter can no longer play over at my house anymore, otherwise he is going to file for custody of the daughter because she's endangering his daughter. And so she hid her child from my kids for six weeks till finally I...she posted on Facebook, the story is in my handout, she posted on a thing on Facebook with a link to Family Watchdog, which is third-party Web site which I believe you pay for, to look for sexual predators in your neighborhood. And she posted a link on Facebook that said it's nice to know who's in your neighborhood, with a link to Family Watchdog, and my wife noticed it. And so I went across the street and talked to her and told her about my offense, 17...15 years earlier, and how they're lumping all sex offenders together and, you know, there's 95 percent of, you know, is not stranger danger and so forth. And she had listed her house for sale, which I failed to mention in my time line, but she listed her house for sale before I was able to talk to her,

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which...and then she posted that on Facebook and finally I had to go tell her. I had to. I went over there and I said, hey, you know, I don't think, you know, this is necessary. She goes: We already made an offer on another house, I didn't know what to do because my...I didn't want to go back to court and fight my ex-husband for custody of my daughter. So after that evening, the daughter did come back over and continued to play until she did sell her house and they moved six weeks later. We've never seen her since. And I will conclude with that. [LB460]

SENATOR ASHFORD: Thanks, Cory. Any questions? Senator McGill. [LB460]

SENATOR MCGILL: I just want to thank you for coming up because that's the exact kind of case that I was talking about earlier, which you don't belong clumped in with...I mean some sort of punishment is fine but to be a lifer now on there. Do you... [LB460]

CORY RICHMOND: I'm actually a 25-year (inaudible). [LB460]

SENATOR MCGILL: Or 25-year? Okay. [LB460]

CORY RICHMOND: Yeah, I was extended from originally ten, which I should have been finished in 2007,... [LB460]

SENATOR MCGILL: Yeah. [LB460]

CORY RICHMOND: ...but I was then extended, you know, or sucked in, as I like to call it, by this new legislation that just went back... [LB460]

SENATOR MCGILL: Uh-huh. [LB460]

CORY RICHMOND: ...and the wording was worded as such that anyone who's ever been registered... [LB460]

SENATOR MCGILL: Retroactively. [LB460]

CORY RICHMOND: ...as a sex offender must now be registered again for the next 25 years. [LB460]

SENATOR MCGILL: Crazy. Do you mind sharing how old you were and she was at the time? [LB460]

CORY RICHMOND: I was 21. She was 14 but she had lied to me about her age, her and her friends. [LB460]

SENATOR MCGILL: Yeah. [LB460]

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CORY RICHMOND: We had met at 2:00 in the morning. That information is in my packet. [LB460]

SENATOR MCGILL: Okay. Great. I have an interest because I have someone relatively close to me who made the same mistake, only with a 15-year-old I think, and so I can appreciate the situation you're in now. [LB460]

CORY RICHMOND: And it was just like a contact one night. [LB460]

SENATOR MCGILL: Yeah. [LB460]

CORY RICHMOND: It wasn't like long term, like didn't love each other. It literally...I actually got arrested two months...I didn't even know I was committing a crime when the crime allegedly happened. [LB460]

SENATOR MCGILL: Uh-huh. [LB460]

CORY RICHMOND: Two months later, I was arrested. Any other questions? [LB460]

SENATOR ASHFORD: I was out of the room when you started, Cory. When was the offense? [LB460]

CORY RICHMOND: September of 1995. [LB460]

SENATOR ASHFORD: Prior to the... [LB460]

CORY RICHMOND: Prior to any type of sex offender legislation. [LB460]

SENATOR ASHFORD: ...law being enacted. [LB460]

CORY RICHMOND: Yeah. [LB460]

SENATOR ASHFORD: Okay. Thank you. [LB460]

CORY RICHMOND: I appreciate the opportunity to speak. [LB460]

SENATOR ASHFORD: Thank you. Next testifier? [LB460]

TONY UNDERWOOD: (Exhibit 15) Thank you, Chairman Ashford and members of the committee. My name is Tony Underwood and I am married, been married for 19 years. I have three children, ages 16, 14, and 12. I also own a successful IT company that employs ten people. I had committed a voyeurism-related, misdemeanor offense in

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August of 2006, which resulted in two years of probation and ten years on the private registry or the nonpublic registry. In January of 2010, through the enactment of LB285, my punishment was increased by putting me and my family on the public Web site, and I say my family because when, you know, a person who commits an offense goes on the Web site, their family is on the Web site too. It's not just them. And my family was...the Web site wreaked havoc on my family and in ways that I just couldn't describe. My wife, she was isolated at work. Ultimately, she ended up getting fired and she lost her job because of me being on the registry. She had lost several friends. People didn't want to talk to her anymore. They didn't want to be her friend because, you know, what kind of person would stay married to a sexual predator, because that's what everybody is who's on the registry, quote unquote. I know just throughout the neighborhood, social events, she stopped getting invited to social events. My children, they had lost almost all of their friends. Kids would make fun of them. Nobody would play with them anymore. My poor daughter, who was 10 years old at the time when I went on the public Web site, she was probably the most affected by this because her best friend, her mother pulled my daughter aside and showed her the Web site and said, look, your dad is on the Web site, and they told her that her dad was a predator and that she needed to protect herself from me, because obviously my wife, staying married to a predator, wasn't going to protect her. So I had a neighbor who took it upon herself to inform my daughter as to how terrible her father was. She didn't understand why everybody was being so mean to her, how terrible it was, and she even had several of her friends who asked her if her dad raped her because, of course, sexual predators rape their children. It's a misdemeanor offense, by the way. Before the public registry, the oldest son, who was a freshman at Millard West High School up in Omaha, he was excited, vibrant, loved life, loved going to school. He was so excited. As soon as my face went on the registry, he just shut down. He stopped talking to his friends. He just isolated himself from school, from everything. He stopped doing sports. It devastated him. Our neighbors, we had some great neighbors that really supported us. We had other neighbors who were adamantly, you know, oh my God, you're terrible, get out of our neighborhood. And our neighbors started fighting amongst each other because how could you support him; how can you, you know, how can you not support him, he's our neighbor. And it just...it turned into this big mess. We had neighbors that moved because I went on the registry. I live in a very affluent neighborhood up in southwest Omaha. You know, it's just ridiculous. You know, as far as work, I own a company and my competitors know...some of them know that I'm on the registry. They use the registry against me. You know, I go into a business trying to pitch products or one of my salespeople do and they already know that I'm on the registry and they don't want to do business with a company owned by a sex offender. It affects, you know, the livelihood of the people that work for me. Just in summary, I'd like to just please take into account whenever you enact laws, especially retroactive for the sex offender registry, just the dramatic effect it has on everyone around the person. It's not just the creepy guy in his basement. You know, people have families. They have wives, they have children, they have friends, they have coworkers, they have companies that get affected by this, you know. And if you take

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somebody who has a misdemeanor level offense or a, you know, a low-level felony offense who, you know, committed a crime and then you say, okay, get on with society but you're going to be on the registry, you take away their ability to get a job, you take away their ability to have friends, you take away their ability to do anything but yet...you know, and it's for public safety. But yet I challenge you, who's safer? The guy who has a job who's in counseling, who has a wife, who has children, who has friends, or the guy who is completely ostracized from society? Which one is going to reoffend? And I'll tell you that the latter is much...has a much greater chance of reoffending. It doesn't take a Ph.D. to, you know, to come up with that conclusion. So I would just ask that if you, you know, just please, on behalf of my children, please amend this bill so that the tiers that were in place to take the people who are not dangerous, who, you know, committed stupid things, like I've said before. You know, certainly, I committed an offense. I admit it. You know, I did it. But it was, you know, it was a misdemeanor offense. It wasn't pled down to a misdemeanor either. It was a jury trial, found guilty of a misdemeanor. And you know, just please take that into account and stop lumping everybody together, because I'm not different than Roy Ellis in the eyes of my neighbors because of the enactment of the law. And, you know, and just for...you know, and I know the common thing is that the registry is not punishment, it's just administrative. I would just ask that any one of you who think that it's not punishment to please explain that to my children. And also I would just like to pass out a picture of my kids because that's who's on the registry with me. [LB460]

SENATOR ASHFORD: Senator McGill. [LB460]

SENATOR MCGILL: I just want to let you know that many of us didn't understand this was going to be retroactive when we passed it last year, I mean, because we talked about the people who plea bargain, in particular, but, you know, was something the federal law wanted us to do and we thought we were complying with what they needed. And had we known that there weren't going to be the delineations between the types as much and, you know, I wish I would have known more. Think we can't take back what we did, but I support trying to make changes. So thank you for coming. [LB460]

SENATOR ASHFORD: Thanks, Tony, very much. [LB460]

TONY UNDERWOOD: Thank you. [LB460]

SENATOR ASHFORD: Okay. Next testifier. [LB460]

HEATHER WAITE: (Exhibit 16) My name is Heather Waite, W-a-i-t-e. I also have these to hand out. I am not going to claim that I am a psychologist, but I do not need a doctor to tell me that he is not a risk to reoffend. These were the words that Attorney General Bruning said of my husband at the Nebraska State Pardons Board meeting February 11, 2010. He and Secretary of State Gale went on to say that his crime was not a

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heinous one but rather a crime of opportunity, where she liked him and he liked her. Attorney General Bruning stating that my husband was doing well and has a good job, but they could not grant a hearing for a pardon because it would hurt their new law. The Pardons Board administrative assistant had explained that the transcripts of this public meeting had been unfortunately lost because they were recorded over by something in 2009. Mind you, this is in 2010. My husband loves his family very much. He loves his son, my stepson, so much and he has refused to give him up for adoption or, even worse, abortion nearly 15 years ago, and this is where the nightmare begins. He had a consensual, committed relationship with his fiance and she became pregnant in 1996, one month prior to the legal age of consent. She was not a victim. She was a willing participant. Her parents had full knowledge of their relationship and even introduced him as their daughter's fiance. He was taking full responsibility for both her and their unborn baby. March 1997, my husband was convicted of first-degree attempted sexual assault of a minor, deemed a low risk to reoffend, and given three years of probation. He was to register for ten years and was not listed on the Web site. We have been married for nearly 11 years. We have a beautiful 6-year-old daughter that he reads stories to and helps her do her homework. He will drive nearly two hours in a snowstorm just to make it to his son's Christmas concert. He makes sure that his children and I are safe. He's a very intelligent, talented man, and a role model for both his children. I trust this man with every fiber of my being. After the changes of LB285, I cried for nearly three days before I had to go to counseling to deal with the fears I had of what would happen to us. Would he lose his job if his coworkers found out? Would we lose our house? Would the children be harassed in school by their...if their friends or the parents found out? Would their father be able to take part in their education? I feared for our home. Would it be vandalized? Would anyone even think to ask why he was a sex offender? I couldn't sleep. I became increasingly depressed. We had started to plan to have another baby but then, with the changes of LB285, the stress surrounded so much that I can't even...we can't even have one because of all the radical effects it's taken on me. I promised my husband I would protect him until the day I died, and I felt I failed. I couldn't do anything to stop this. I cried. I cried so much that I couldn't think that I would have any more tears to shed. And then when I thought they dried up, I cried more. I felt sick. I still feel sick. I felt scared. We have never...he never denied what he did was wrong, but he feels sick to his stomach when he is compared to real predators out there. He paid his debt to society and now he's being punished all over again for it. He would have been off March 2010. What good is it to watch a man who was never a risk to reoffend in the first place? He never hurt someone. He had a relationship, albeit unfortunately ill-timed, but it was consensual. My husband is not the only person on the registry with this situation either. There are scores of good people on the registry who made a mistake or were misguided at some point in their lives. There's a vast difference between the dangerous person and the persons who are crying out that this is not just and standing up for their rights. These people, these fathers, mothers, sisters, brothers, uncles, aunts, sons, daughters, lifelong friends, they are like any of your own family and friends that you have. It's easy for those to cast stones and say how terrible someone is,

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but what if your son or daughter was suddenly in the situation as my husband? [LB460]

SENATOR ASHFORD: Heather, I'm going to...I have your comments here... [LB460]

HEATHER WAITE: Uh-huh. [LB460]

SENATOR ASHFORD: ...but I'm going to ask you to sum up because we have to have other opportunity for... [LB460]

HEATHER WAITE: Okay. This law is bringing danger to the families by making them vulnerable and exposed to something that, for some, happened over a decade ago. And the effort spent watching the low-risk, nonviolent offenders who have already finished their sentencing, are just trying to move on with their lives, could be better spent trying to prevent other crimes in the city. The mere fact that the law was retroactive is the most absurd. You can't keep punishing people just so you can feel you're being tough on crime and making the public more safe. I'm the public and I don't feel safe. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Thank you, Heather, for being here. Next testifier. Why don't we go here. Why don't we go with first and then next. Okay. [LB460]

LINDA WAITE: Age before beauty, right? [LB460]

SENATOR ASHFORD: Well, no, not at all. Beauty but... [LB460]

LINDA WAITE: Ladies and gentlemen, I am Heather Waite's mother-in-law, Linda Waite. In other words, the sex offender is my son. I had written quite a bit about lumping everything together but I think that's been addressed quite well, I had said it doesn't work in the clothing industry, one size fits all, and it doesn't work in law either. If we're going to do that, then we need to do that with all laws, that if you illegally park you should be convicted of (inaudible) motor vehicular homicide. I am the offender's mother. I have lived through this for 14 years. Except for my grandson, I wished he'd never laid eyes on the girl, but they were a couple. And once he found out she was pregnant, the first words out of his mouth were, I want this child. And I said, well, certainly your father's blood flows in his veins; yes, we want that child. They were together the whole time. He took her to the doctor. He took her to Lamaze. They called him to take him to the hospital...to take her to the hospital, I'm sorry. He took her to the hospital. He was in the delivery room. The child was born. They came to my home and lived with us for two months until some things went on, shall we say. There was a lot of illegal activity and his arrest, but I won't go into that either. We had a minister that was with us through this whole thing and I told this story to many ministers and none of them have ever condemned him. It's...he stepped up to the plate, is our modern vernacular for taking

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care of his child. He has supported this child emotionally, financially, physically, and spiritually. He is a very good father. He's a good son. He had never been in trouble in his life. He...the retroactive thing, up until that point the judge had said ten years, and he would have been off of it last March but with the retroactive he went on and they added on ten years. We just can't make laws that lump all people together. The gentleman said there was a distinguishing...easy to distinguish, I have a problem here, between the pedophile...not a pedophile, a predator and a sex offender. No, there isn't. Thank you for your time. [LB460]

SENATOR MCGILL: Thank you. [LB460]

LINDA WAITE: And I thank Senator McGill. [LB460]

SENATOR ASHFORD: Thank you very much. [LB460]

LINDA WAITE: Thank you. [LB460]

SENATOR ASHFORD: Let's see, we had a gentleman over with the red sweatshirt. [LB460]

LINDA WAITE: I'm sorry, I don't know if I gave my name. [LB460]

SENATOR ASHFORD: Oh, you may not have. [LB460]

LINDA WAITE: And I don't have my paper. [LB460]

SENATOR ASHFORD: Do you have your sheet that you... [LB460]

LINDA WAITE: Linda. Linda Waite. [LB460]

SENATOR ASHFORD: ...that you filled out? [LB460]

LINDA WAITE: Yes, I have it. [LB460]

SENATOR ASHFORD: Okay. Great. Thank you very much, Ms. Waite. [LB460]

DAN KONECKY: (Exhibit 17) Hi, everybody. Thanks for taking the time to have this hearing. My name is Daniel Konecky, it's spelled K-o-n-e-c-k-y, I live in Fremont. Basically, I'll start at the beginning and let it filter down as to how it's been affecting me, like some of the hardships in my life. I pled no contest to attempted second-degree sexual assault of a minor back in October of 2005. Was sentenced in December of '05 to two years' probation, from which I was released approximately a year early for completion of all requirements and good behavior. I was accused of having, basically,

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consensual relations with a 15-year-old girl. I believe I was 23 at the time. I mean it was a rough time in my life, but basically I was released from probation early for, you know, good behavior and whatnot. I was classified as a level I offender, and actually they had classified me as level II and they had just based it off that I had some minor in possessions back before I was 21. So I had a hearing with them here in Lincoln and, you know, we talked about it and they did deem me as a level I, lowest risk to reoffend. Now that the law has changed as of 2010, I'm a lifer. I'm a lifetime registrant now. I've got to go in, I mean I think we all know, I've got to go in four times a year. If I get a job in another county, I've got to register employment in my home county and the county that I'm employed in, you know, any time I move, obviously, any time I get a new vehicle, I mean, yeah, it's a big...it's a big, you know, it's a big change. And I called the State Patrol and asked them why, because I don't feel like I'm a predator. I know I'm not a predator. I'm not a pedophile. I'm not a person that's ever, you know, been like a predator or chaser. I've never sought out, like, teenage girls, you know, or younger even, for gosh sakes. But I mean I think it's a horrible thing. I called the State Patrol and they told me that basically I pled to attempted second-degree sexual assault and they're looking at it as an aggravated offense now. I don't know if they were when I pled to it. For me, they told me the whole word was aggravated. They're using that definition in a different light to apply to my case, which was retroactive, which had been closed...or not closed but I had gotten off probation in 2007 and they were now using that different definition to my case as of now. You know, I haven't been in any trouble. I've gone out of my way to, you know, keep myself corrected, you know, some of the things when I was on probation, like going to AA and NA meetings faithfully still. And so that's what they basically explained to me why, you know, why it changed for me. Now as far as I could tell, like the changing of the word "aggravated," the definition after the fact makes the crime a greater crime, especially when it goes back retroactively, I feel. I thought it was illegal. I thought it was like a violation of the Fifth Amendment. Basically, you know, an effect in my life is that the state, they're changing to punish me, they're changing the punishment on me. They're basically almost punishing me again for a past act that's been closed. They're not taking any past info or any facts from my case, you know, my case into account on this new registry. While the case was going on, all of the factors were taken into account as far as, you know, while rendering my punishment, classification, and risk level. Right on my court papers here, right when I go register every four months, it says nonpredator, so I don't know why I'm on there for life. It just...you know, there is a big...that does need to be dealt with, especially like on the previous bill, how we were talking about the parks. I mean that's got to be dealt with. This is, you know, it needs to be a little bit more (inaudible). I can't think of the word I'm trying to say. I'm really nervous. But it does seem that I'm being repunished with a stronger sentence but there's no chance to appeal, there's no mechanism for me to show, you know, my character or the facts from my previous case in rendering, you know, a suitable risk assessment for me. I really think it's overkill. Now since January 1, there's been numerous instances of public humiliation. I'm married, with a daughter. My daughter, you know, she came home from school one day telling me that her friend, her

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friend's dad had told her that if she sees me to run. My daughter was trying to "pronunciate" sexual predator, and God bless her, you know, so I had to explain it to her right then and there on the spot. The guy, you know, he drove by a couple times and looked at me, stared, drove away. I actually ran into him in Walmart and I talked to him about this, you know, man to man, and I told him the facts of the case and, you know, come to find out, he had had a brother that was in a similar situation, you know, as me, only I don't know, it came out differently of course, but he understood once I explained the facts to him. He was just going by off of what he saw on the registry. There's nothing on the registry that says nonpredator, nonpedophile. [LB460]

SENATOR ASHFORD: Dan, let me do this. I appreciate what you're telling us and I'm not...I don't want to cut you off, but we're going to kind of try to stay with the lights. [LB460]

DAN KONECKY: Oh. [LB460]

SENATOR ASHFORD: So there may be some questions. Senator McGill. [LB460]

SENATOR MCGILL: I'd just like to see the paperwork, if I could. [LB460]

DAN KONECKY: This is basically it. [LB460]

SENATOR MCGILL: That's okay. [LB460]

DAN KONECKY: I don't...I can't find anything in here that says I'm lifetime either (inaudible). [LB460]

SENATOR MCGILL: Okay. I'll deliver...I'll send a page to give it back to you in a second. [LB460]

DAN KONECKY: No problem. I mean, you know, I mean I know the red light is off but emotionally it's more taxing on me than anything, and my family, not just me but my wife and daughter. My daughter has been basically shunned. I mean she hasn't been invited to a birthday party in years. We never have birthday parties at our house. I don't, you know, we don't have any of her friends over just for my own. That's my rule, just for my own. I don't want to, you know, scare anyone or upset anyone. I'm just trying to live to my best means and it's like...I just...I really feel like it's overkill at this point for me and my family. It's hurting. It's doing more hurt than harm. Before in Fremont there were about 10 registrants, maybe 20 at the most. Those were some dangerous ones because I had unfortunately been acquainted with a couple of them in previous...we worked together. Now they're lost in a Web of 68 offenders? The neighbors yell at me. [LB460]

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SENATOR ASHFORD: Let's do this, Dan. Senator McGill, do you have any questions? [LB460]

SENATOR MCGILL: No. [LB460]

SENATOR ASHFORD: Why don't we...any other questions of Dan? I think we understand it, what you're telling us. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Thank you very much, Dan. Thanks for sharing. [LB460]

DAN KONECKY: Sorry I went over the time. [LB460]

SENATOR ASHFORD: No, no, you're fine. You're fine. I just want to keep... [LB460]

DAN KONECKY: Thanks. [LB460]

KYLE WAITE: Good afternoon. My name is Kyle Waite, W-a-i-t-e. Almost 15 years ago, as you heard, I was in a relationship that was an error in judgment but one that I would never call a mistake due to the birth of my first child. After a few months, I was given a choice to either give up my son or face the charges that bring me here today. I was to be removed from the registry early 2010. I was now brought back as a 25-year. I have a soon-to-be 7-year-old daughter, and I'm very grateful there are laws out there to protect her. However, the new laws endanger her more than they protect her. I have the possibility of losing my IT job that I've worked 12 years at with the impending restrictions on Internet use and tracking software on all computers that I touch. It's now impossible to discern the dangerous individuals from low-risk offenders. Ask you to please look at how this affects individuals like myself who have admitted their mistakes and have made good lives for themselves, their families, and the community. Thank you. [LB460]

SENATOR ASHFORD: Senator Lathrop. [LB460]

SENATOR LATHROP: I want to ask a question. [LB460]

KYLE WAITE: Sure. [LB460]

SENATOR LATHROP: Before this law that we changed went into effect, were you on any kind of registry? [LB460]

KYLE WAITE: For ten years. [LB460]

SENATOR LATHROP: For ten years? [LB460]

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KYLE WAITE: Yes. [LB460]

SENATOR MCGILL: Was that a public one? [LB460]

KYLE WAITE: Yes. No, no, I was a level I. I was not on the public registry. [LB460]

SENATOR LATHROP: And explain what the situation was before we changed this. This is some Adam Walsh thing, isn't it? [LB460]

SENATOR MCGILL: Uh-huh. [LB460]

KYLE WAITE: Yes. [LB460]

SENATOR COUNCIL: Yeah. [LB460]

SENATOR LATHROP: Okay. And I'm listening to these stories and I'm just trying to put it in context and I know...I really thought we addressed the situation where people who weren't on it weren't going to show up retroactively. [LB460]

SENATOR MCGILL: We really thought that. [LB460]

SENATOR LATHROP: I really... [LB460]

KYLE WAITE: No. [LB460]

SENATOR LATHROP: No, I mean I think there was a concerted effort by this committee to be fair to people who didn't know they were going to be on it, went ahead and pled to something, might have had a trial, couldn't...passed on a chance for a trial and then ended up on this thing retroactively. So beforehand, to get on there, did we grade people on what level they were at based upon somebody's analysis of what risk they presented? [LB460]

KYLE WAITE: Yes. There were three levels, level I, level II, level III. [LB460]

SENATOR LATHROP: And what do the three levels represent, if you don't mind educating me? [LB460]

KYLE WAITE: Level III are...they were on the public registry for the violent crimes. The... [LB460]

SENATOR LATHROP: Somebody that committed a first-degree sexual assault. [LB460]

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KYLE WAITE: Very likely to reoffend. [LB460]

SENATOR LATHROP: Okay. And that's a psychologist, somebody that's making a judgment about that person. [LB460]

KYLE WAITE: As far as...or State Patrol, as far as I knew. [LB460]

SENATOR LATHROP: Or is it a level of crime and you just get that? [LB460]

KYLE WAITE: I believe it was the crime you were convicted of. [LB460]

SENATOR HARR: I believe it was an evaluation done by the Nebraska State Patrol. [LB460]

KYLE WAITE: Okay. [LB460]

SENATOR LATHROP: Okay, somebody does an evaluation and you belong on level III. What was the level II? [LB460]

KYLE WAITE: Level II, I believe, was reported to the schools but not... [LB460]

SENATOR MCGILL: And Health and Human Services. [LB460]

SENATOR LATHROP: What did it take to get on there though? [LB460]

KYLE WAITE: I am not... [LB460]

SENATOR LATHROP: Who made the assessment? What did that represent, that you were a risk or not a risk or...? [LB460]

KYLE WAITE: I am not sure. I was a level I, no risk, not a risk. [LB460]

SENATOR LATHROP: Not a risk? [LB460]

KYLE WAITE: I am not familiar... [LB460]

SENATOR LATHROP: And now what we do, end up getting all level I's, II's, and III's are all on the same registry. [LB460]

SENATOR MCGILL: Uh-huh. [LB460]

KYLE WAITE: Yes. [LB460]

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SENATOR LATHROP: I did look at it while we were sitting here and... [LB460]

KYLE WAITE: I'm on there for 25 years now. [LB460]

SENATOR LATHROP: Okay. And we are doing this because we get Adam Walsh money or something? [LB460]

SENATOR MCGILL: Yeah. It's messed up. [LB460]

SENATOR LATHROP: Okay. [LB460]

\_\_\_\_\_ : \$186,000. [LB460]

SENATOR MCGILL: Yeah, that's pretty messed up. [LB460]

SENATOR LATHROP: Okay. That helps me get some perspective on what's...these stories. [LB460]

KYLE WAITE: Thank you. [LB460]

SENATOR ASHFORD: How many additional testifiers do we have? [LB460]

SENATOR MCGILL: Just a couple more. [LB460]

SENATOR ASHFORD: Go ahead. [LB460]

DANIELLE WAITE: I'm Danielle Waite, W-a-i-t-e. Kyle Waite that just spoke is my brother-in-law. I am actually a victim of a sexual assault in my home. It was my stepfather. It started at age 10; he was 40. He's a predator. He was a level III high risk on the Web site, and now my brother-in-law is considered to be the same as him, and it just makes me sick. And I'm sorry, I get a little emotional talking about it. But Kyle is not a predator. He's a very good uncle, father. I guess I just...I don't understand how he could be on the same...and I know that you were saying this is kind of the technicality that, you know, Kyle is not the same as the person that abused me. And I guess I don't have a lot to say, but I just wanted to bring that to your attention. But I would do everything to keep my daughter safe and I am not afraid of my brother-in-law Kyle at all, and I know there's a lot of people in this room that are going through the same thing with their families. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Yes, I think...I believe there are. Thank you, Danielle. [LB460]

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DANIELLE WAITE: Thank you. [LB460]

SENATOR MCGILL: Thank you very much. [LB460]

CORY WAITE: My name is Cory Waite. I am Kyle Waite's brother. Actually, with the change about the person who...the stepfather that sexually molested my wife was a high level, though with the changes he is actually now a 15-year and my brother is a 25-year. So with the changes, Kyle is worse than the 40-year-old who touched a 12-year-old. But again, I'm Cory Waite, it's W-a-i-t-e. I am a site manager of a group home here in Nebraska. We typically take youth that have law violations which include sex offenders. These youth are court ordered to complete our program, receive therapy to help them learn from their mistakes and diminish the youth wanting to continue the behavior. One thing that we would never do is have a kid complete our program and one week before we discharge him and send him home say, ah, we feel like you need to go through the program all over again. With this change, that's exactly what we're doing. My brother has been on this list, the sex offender, for 14 years. He's been an outstanding citizen that entire time, no law violations at all during that time, completed his probation, completed therapy, did everything he was asked of, yet now with this change he's 25 years, and again worse than the 40-year-old putting their fingers in a 12-year-old. It makes me pretty sick. Again, Kyle is a wonderful father. He's a wonderful uncle. That's my baby (inaudible). I'd let Kyle watch him and watch her anytime. You know, we talk about the level system. I believe Police Chief Ford talked about thinking about the level system being removed. This, you know, we were talking about the I, II, III. That seems pretty cut and dried, black and white, to be able to decipher what the crimes were. I'm just confused why, like my mother was saying, why is a marijuana charge not treated like a cocaine charge? Why is there no central registry for murderers? Why is there no central registry for DUIs? Why is there no central registry for drug dealers? We're talking about protecting kids. Let's protect kids. Thank you. [LB460]

SENATOR ASHFORD: Thank you, Cory. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Any other? Come on up. I think we'll go here and then... [LB460]

JANE NELKIN: Good afternoon. You know me as Jane in the Capitol cafe, but if you Google my address you'll automatically see my fiance's name, his picture, and a warning that he is a, quote, dangerous sex offender. He made a stupid mistake, yes, he did, and was caught in a police sting on a computer. There was no victim. In many states, his crime is a misdemeanor. He served two and a half years in the penitentiary where tests showed that he is not a sexual predator. Upon his release, he was ordered to comply with the sex offender registry for 25 years. We are unable to rent an

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apartment in a nice complex. He cannot get a good job worthy of his skills. In fact, he can't get a job even at McDonald's. Yet, he is the hardest working, most honest, most reliable worker any business could have--and we go to sleep every single night afraid. The broadness of the Sex Offender Registration Act has created a new minority, a new target of condoned hatred. The term "sex offender" is generally interpreted as a predator, a child molester. Thousands of people are wrongly placed under this heading. It is not only acceptable to hate them but our own judicial system will tell you where to find them. I am in danger because I love him and I live with him. And if we had children with us, they too would be in danger. Yet there was no victim. I pray that things will change. Thank you for listening. [LB460]

SENATOR ASHFORD: Thank you, Jane. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR COASH: Wait. Wait. [LB460]

JANE NELKIN: Oh, I'm sorry. [LB460]

SENATOR ASHFORD: Senator Coash has a question. [LB460]

SENATOR COASH: Thank you, Senator Ashford. [LB460]

JANE NELKIN: Oh, I'm sorry. [LB460]

SENATOR COASH: Jane, I got to ask you a question here. [LB460]

JANE NELKIN: Okay. [LB460]

SENATOR COASH: Was the crime that he was convicted of for looking at child pornography? [LB460]

JANE NELKIN: No, absolutely not. It was not sexual. What he was doing on the Internet is, like I said, it was stupid. He was selling marijuana. He was in a chat room and a police woman came on and struck up a conversation with him. [LB460]

SENATOR COASH: What does marijuana have to do with the sex offender registry? [LB460]

JANE NELKIN: Absolutely nothing, but she continued to contact him. He never once contacted her. She continued to contact him and then she said she wanted to meet him. He said, do you have the money? He kept saying, do you have the money? That's what he was trying to do was sell marijuana, which he has since given up and he's totally

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clean and sober and a Christian man and all this. But anyway, she wanted him to meet and he thought a friend was playing a joke on him. He said, I want to see who you are. So he arranged to meet at a filling station on 27th Street and he pulled up there in his car. He didn't even get out of his car, and they all surrounded him and arrested him and that was that. [LB460]

SENATOR COASH: What was the crime he was convicted of? [LB460]

JANE NELKIN: Enticement on a computer of a minor. There was no person on the other end. I mean there was no...he had no intentions of, you know? She did mention, we could have sex in my parents' pool house. But he again said, do you have the money? He didn't agree to trade sex for... [LB460]

SENATOR COASH: And it was a police officer actually? [LB460]

JANE NELKIN: Yes, absolutely. [LB460]

SENATOR COASH: Okay. All right. Thank you. [LB460]

JANE NELKIN: Okay? Thank you very much. [LB460]

SENATOR ASHFORD: Thanks, Jane. Did you fill...would you fill out a sheet for us, too, or did you? [LB460]

JANE NELKIN: Yeah. [LB460]

SENATOR ASHFORD: Oh, we have one. [LB460]

JANE NELKIN: Okay. [LB460]

SENATOR ASHFORD: We have one. [LB460]

JANE NELKIN: Thank you. [LB460]

SENATOR ASHFORD: Thanks. [LB460]

JANE NELKIN: Thank you for listening. [LB460]

SENATOR ASHFORD: Next testifier? [LB460]

CHARLES CASTLE: I'm sorry I'm late. I just found out about the hearing today, so I didn't get to sign your sheet. [LB460]

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SENATOR ASHFORD: Well, that's all right. Why don't you give us your name and then you can sign the sheet when you're finished. [LB460]

CHARLES CASTLE: Okay. My name is Chuck Castle, spelled C-a-s-t-l-e, and I'm from Fremont, Nebraska, also. And listening to a lot of the testimony that's here pretty much covers what I feel and have to say and experienced, both with my family and friends and relatives and jobs and etcetera. But one thing I'd like to bring up to you personally is that this law can affect you and your children. It could be just something simple as your teenage son mooning somebody. Very innocent, but that would be indecent exposure and that puts them on the sex offender registry and considered to be a predator. It could be something as simple as somebody urinated behind a tree or something and gets seen. And again, they'll be...that could be your son, your daughter or anything like that. It could be one of your teenage children sexting, sending sexual text messages over their cell phones and stuff that could also put them on this registry. So I would like you to consider that when you do this, that this may affect your children as well in other ways. I would like you to consider that I was on the tiered system. I would have been off this year. I haven't been able to find work anymore. I've got very high-level skills in IT and computers and stuff, and I can't get hired because of all the Internet question right now with it, because that's now being considered in court. I think the tier system was a fair system for all things considered. As far as the money that you'd lose because of noncompliance to the federal law, I would like you to consider that with that money being...that money is being spent now, that burden has been placed on all of our sheriff departments. They've had to hire, from what I understand, Douglas County had to hire at least two additional officers just to comply with the law. So not only did you...where we may spend...lose \$1,000 or \$100,000 from the federal government but we're going to spend hundreds of thousands with our local law enforcement and county sheriffs' departments to enforce it. And in these tight times, I don't think all these cities and stuff need that burden, where they would be better to take that money and use it to patrol the people that really are predators. I think that money would be better spent towards prevention of sexual abuse of children. Ninety-five percent is from family and friends. I think education should be spent...the money should be spent towards education of our youth and our parents and the general public as to that fact that they're more at risk from a relative than they are from somebody who's on this list, in general. And that's all I have to say. [LB460]

SENATOR ASHFORD: Thanks for your comments. [LB460]

CHARLES CASTLE: Thank you. [LB460]

SENATOR ASHFORD: How many more do we have, people who would like to speak? [LB460]

SENATOR MCGILL: Two more. [LB460]

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WILLIAM BASSLER: Sorry, I haven't filled out a sheet. [LB460]

SENATOR ASHFORD: That's all right. You can fill it out after you've finished. Just give us your name and spell your last name for us. [LB460]

WILLIAM BASSLER: My name is William Bassler, that's B-a-s-s-l-e-r. I'm your monster. I went to prison for three years in Oregon for having sex with my daughter. When I went to prison, the first thing that I did was try and get therapy. In fact, that's what I was trying to do when I was caught, was try and get therapy for myself and my daughter, and that's how the crime came out. The first group that I belonged to was STOP in Oregon. It was a two-week course and they told us that 90 percent of sex offenders reoffended. This scared me to death because I didn't want to reoffend. I didn't want to have any more victims. I had dreams of getting back with my family. I have five children by my first marriage. They are gone. They will never speak to me again. That is a hard thing to lose. When I got out of prison...well, before I got out of prison, I involved myself in other therapy. One of the programs that I went into was five and a half days a week, eight hours a day. I've completed over 3,000 hours of treatment to try and change myself so that I would never have another victim. I lost a lot. When I came out of prison, I just happened to have a couple friends that owned businesses and I was able to get a job. I ended up as a plant manager for a printing company and eventually met my second wife. Before we started to date, I wanted her to fully understand the person that she was involved with. She read my cases, she read my therapy. We got married and we have three kids. But now we're separated because it's gotten too much for the kids to handle. They cannot continue on. And this is at my insistence. I want you people to understand that there is a chance for reforming your life, that there is a chance for a bad person like myself to change. We just need the community's support. We need the people to care about us. Your laws have made that impossible. No matter how hard I try, no matter what I do, no matter what therapy I go through, no matter what, I prove I am always the monster. Thank you. [LB460]

SENATOR ASHFORD: Thank you, William. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Any questions? Thank you. Do we have another person? I keep looking for... [LB460]

SENATOR MCGILL: I think he's the last one. [LB460]

DAVID KEMPF: Thank you, Senator Ashford and committee for hearing me out. Most everything that I wanted to discuss has already been discussed, so I'll keep this short. My name is David Kempf, D-a-v-i-d K-e-m-p-f. I'm the father of a sexual offender. He

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was 18. He was in high school when this happened. It's already been discussed before you. I'd just like to add, that I don't think has been mentioned, part of the problem with the registry as it stands now as well is that there's no opportunity for him to get off for good behavior. He's got 25 years on the registry. There's no opportunity for him. He's got five years probation. His probation officer told him that on good behavior his could be reviewed and he could get off probation earlier, but there's no mechanism in place for him to get off the registry any sooner. Also one of the things that isn't clear to people is he got 25 years on the registry, but he actually got three years because he has five years probation time, and the registry doesn't start until he's off probation. So he actually got three years, not 25. And so...and way I understand, even if he gets released early from probation, he still has to go that full 30 years. The State Patrol set the date and I believe it's 2044. So that's all I have to say. [LB460]

SENATOR MCGILL: Thank you. [LB460]

SENATOR ASHFORD: Do we have any other people that would like to testify? Okay, that concludes the hearing. I'm going to waive my closing. Thank you, everyone, for coming and sharing your... [LB460]