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Judiciary Committee  
April 05, 2011

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[LB460]

The Committee on Judiciary met at 12:00 p.m. on Tuesday, April 5, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on AM873 and AM969 to LB460. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. Why don't we get started. We have two amendments today that we're going to consider regarding LB460. LB460 was...is a bill that was introduced to make technical amendments changes to the sex offender registry law. At that hearing, the hearing on LB460, there were a number of testifiers that commented upon the impact of the change in the sex registry law on their lives and their experiences. They related their experiences to us. We did not have...I don't think we had any testimony on the technical aspects of the sex registry law or the impact of any changes in the sex registry law to try to address some of the concerns that were raised at that hearing. So what we're going to do is have that discussion today. And we're framing the discussion around two amendments: AM873 and AM969. Both...one amendment deals with the...and I believe I'm right, the Level 1 sex offender and...one of the amendments deals with the Level 1 sex offender designation that occurred prior to the passage of the...of LB285 and the other amendment would reinstitute the prior law. The amendments are really here for discussion purposes. We are interested in finding out more about LB285 and its implementation, how it impacts individuals, but we also want to hear today about the...from law enforcement, county attorneys, others who are implementing LB285 and the Adam Walsh Act. So the way we're going to divide that...and rather than talk about each individual amendment, we're going to group them together and we're going to give about a half hour for each...for those who would like to comment about LB285 and the Adam Walsh Act. And then we're going to take another half hour and how its affected their lives. And we would ask those that testified at the last hearing not to testify again. We have their information in the record and it's important information and we certainly did listen to it. And the information we did receive at that hearing forms the basis for this hearing. We would not have had this hearing in all likelihood had we not heard some testimony that certainly gave this committee pause and concern about the implementation of Adam Walsh, especially as it related to those individuals who were designated as Level 1 sex offenders who are less, or in some cases Level 2 sex offenders, who were not on a public registry prior to 2010 and the implementation of LB285. We have that testimony in the record. We'll be happy to hear some more testimony, but we'd like to limit it to those individuals who did not testify at the last hearing so we can get different perspectives. And then we'll open it up to...I know the Attorney General's Office is here to talk about the bill, the amendments, and LB285. I believe the county sheriff organization is here, the sheriffs are here to talk about it, and the State Patrol I see are here as well...is here as well. So that's the way we're going to handle it. That's my opening really, and I'm going to turn it over now to

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the gentleman from New Mexico who talked to me earlier who is going to testify about his perspective on these bills if you would. And when you come up, if you'd state your name and where you're from.

LARRY NEELY: Good afternoon, Mr. Chairman. My name is Larry Neely, N-e-e-l-y. I'm from New Mexico and I testify in other states. I'm gratified to be here in Nebraska to appear before you guys. I'm familiar with this issue because I'm a member of the New Mexico Criminal Defense Lawyers Association, and the other 49 states are dealing with the same issue. And I've studied it in great detail, and I have studied Nebraska's LB285 and I'm familiar with what you had and what you now have and the complications of what has been done in this state. And to begin with, sex offender registration is a very hot button issue. And most of you are not going to run out and campaign on this...easing any restrictions on sex offenders is probably not going to be the first thing you mention in your reelection campaigns and I understand that. But what you can do to make that more palatable is you can look at the comprehensive issue of what might be more attractive is that we're going to try for the sake of Nebraska to have the best registry we can have that achieves the objectives of what its stated purpose is, which is a civil regulatory scheme. [LB460]

SENATOR HARR: May I interrupt for a second? Can you speak a little louder, please. [LB460]

LARRY NEELY: It's not...it's a civil regulatory scheme despite the contention of a lot of others who misperceive it to be a part of the punishment and sentence. It's actually a person is not sentenced to register. It's a consequence that happens much like having a vehicle licensed or registered. It's a regulatory scheme designed to help law enforcement track individuals and to notify the citizens of their presence. And it cannot be punishment because if it is punishment and if it imposes disabilities or restraints, it would be unconstitutional. So keeping in mind it's a civil regulatory scheme, the states are struggling to try and have the best regulatory scheme they can to protect their citizens. And Nebraska had a very good system prior to LB285. They took everything into account of that uniqueness of the offender. And as of January 1, 2010, Nebraska, along with other states, have moved away from that to attempt to comply with the federal Adam Walsh Act. The problems that I see in Nebraska that have come up since the implementation of LB285 is that it changed the system midstream for people. People had been registered for nine years who thought they were going to be off one year later were all of a sudden told you will register for a minimum of 15 years or 25 years or lifetime. And that doesn't equate well with the commitments that they had been induced to plead guilty with. They don't understand why on the ninth year they can be told you're on for lifetime or you're on for 25 years. And they were told if you plead guilty and you risk assess low, you will not be visible to the public, and then all of a sudden that all changed overnight. So as I've studied this and I've listened to the concerns of law enforcement and I've looked at AM969, it seems like to me that you're fighting the

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same problems that my state and other states are fighting. The Adam Walsh Act is very rigid, and despite your best efforts, you're still not complying. Maryland tried last year; they're still not compliant. We sort of tried; we're still not compliant. Wyoming tried. So despite the dramatic change that you've done, you're still not compliant. And what I would think that looking through this AM969 would be something that you should consider is the hybrid approach between going back to the old system and staying with the current system. If you were to take the people who were registered pre LB285 and you restored them to the duration of registration that was required at that time, and you restored them to the public disability for those who were low or moderate risk were not visible to the public and you left the LB285 in effect going forward for the 15, 25 years and life, you would have a system where the older people would not have the rules changed on them. They would still get off in ten years less their probation period, and they would still not be visible to the public if they had been risk assessed at low risk or moderate risk. And that class could never enlarge because the people in the class would be fixed by they had been registered prior to January 1, 2010, and risk assessed prior to January 1, 2010, then that group could never grow because you were either registered prior to January 1, 2010, or you were not. And that would be the dividing line that if you had gotten into the system, had your risk assessment done, you were in the old system. And there's a small group of people when the state quit doing risk assessments between September and January 1 when the law took effect--and I don't know exactly how we would have to deal with those because that's probably a dozen or so that were never risk assessed. But the State Patrol is very much concerned about having to do more risk assessments and the cost and they don't believe that they can have that liability of if they get it wrong. So they would no longer have that liability because the risk assessments would not be going forward, but those who had them done and relied on them would be able to stay under the old system. [LB460]

SENATOR ASHFORD: Larry, let me ask just a couple foundation and then we'll turn it over to the committee. The constitutional issues involving a closed class in AM969 which basically sets out a class of individuals that would be treated differently from those who were convicted after January 1, 2010, have you looked at that issue? Is there a closed class issue or is that not the case in your opinion? Can you... [LB460]

LARRY NEELY: I don't know that I'm qualified to answer that question. I don't believe it would create a problem for that. When we change regulatory schemes, we frequently grandfather people in to the old scheme so I don't feel I can say affirmatively one way or another. [LB460]

SENATOR ASHFORD: Okay. And as is the case in New Mexico, I assume, prior to the...your passage of a similar bill to LB285, I know it's not identical but it was a reaction to the Adam Walsh Act, as was ours, there was a system in place for a period of years that had a gradation of registration requirements based on risk. And now we have a system under the Adam Walsh criteria in the federal law based on offense as opposed

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to risk assessment of the individual offender. Isn't that correct? Is that what you have in New Mexico as well, some sort of offense-based system now? [LB460]

LARRY NEELY: We have an offense-based system, but we do have an old SORNA for people who were registered prior to 2005. And those who were registered prior to 2005 are either on...those who registered after July 1, 2005, are on probation or parole were scooped up into the new SORNA and then we left the old people in that shrinking class of pre-2005. [LB460]

SENATOR ASHFORD: Okay. So you took 2005 and what was the 2005 date? How did that...what was the relevance of that date in New Mexico? [LB460]

LARRY NEELY: That was the effective date of House Bill 165 where the duration of registration was extended from 10 years to lifetime for many offenders. And those people who were on the 10-year and 20-year tracts stayed in those tracts. [LB460]

SENATOR ASHFORD: Okay. So you in effect did something similar, though slightly different than AM969, and treated those pre-2005 people as they would be treated under prior law or existing law at that time. [LB460]

LARRY NEELY: That's correct, Mr. Chairman. [LB460]

SENATOR ASHFORD: And that change is still in effect or that... [LB460]

LARRY NEELY: That change is in effect and has not been challenged. [LB460]

SENATOR ASHFORD: Senator Coash. [LB460]

SENATOR COASH: Thank you, Senator Ashford. Thanks for coming all the way from New Mexico. In New Mexico, who...what entity is charged with the duty of maintaining the registry? [LB460]

LARRY NEELY: Mr. Chairman and Senator Coash, it is identical to Nebraska. The county sheriffs maintain the registry. As far as the individual reporting, the State Department of Public Safety manages the central registry, which is essentially what Nebraska does. The State Patrol manages the data and the county sheriff manages the offender, as I understand Nebraska's system. [LB460]

SENATOR COASH: Okay. So in New Mexico do you have two separate registries--one for the...? One of the concerns that has been brought forth is the administrative costs of having two registries--one for folks who are convicted prior to a date and one after. And I understand that the ones prior to the date eventually all those go away because that pool won't grow. But in New Mexico, do you, in essence, maintain two separate

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registries for one before a date and one after a date? [LB460]

LARRY NEELY: Senator Coash, Mr. Chairman, the person is identified by their registration date, being either new or old SORNA, and they continue to register. The old SORNA report once a year and the new SORNA report four times a year. So the central registry designates them as old or new SORNA and then the sheriff handles the reporting either annually...and those who are under old SORNA are actually much cheaper because they don't visit the sheriff as often. [LB460]

SENATOR COASH: Okay. So there's still one registry, just different reporting requirements for one group as there is another group. Is that accurate? [LB460]

LARRY NEELY: Mr. Chairman, Senator Coash, that is correct. [LB460]

SENATOR COASH: Okay. Thank you. [LB460]

SENATOR ASHFORD: Let me just follow up on one point. You mentioned that compliance had been difficult around the country. Is that...do you know specifically how many states have been determined to be compliant, if any? [LB460]

LARRY NEELY: Mr. Chairman, the answer to that, at last count 4 states and I believe 7 jurisdictions or additional territories and tribes have been declared out of maybe 157 jurisdictions in the country. It's a very small number that have been deemed substantially compliant. But you're in good company along with our state and most others. [LB460]

SENATOR ASHFORD: Any other questions? Do you have any other concluding comments? [LB460]

LARRY NEELY: Well, Mr. Chairman, I had one additional comment that I had brought to the committee's attention. In looking at Nebraska's lifetime registry, there's a serious, what I perceive to be, flaw in the registry for lifetime persons. Under current law, a person can be lifetime in the state for the same conduct. And I know that sounds bizarre, but the way the law is worded if a person has a prior conviction. And a prior conviction could come about by being prosecuted both federally and state for the same conduct because there's no double jeopardy bar if the state of Nebraska finds images, the feds can also prosecute for the very same identical images. And if Nebraska convicted him first or if the feds convicted him first, they would have a subsequent conviction for the same conduct. Or another example would be a person could be having a romantic relationship with a teenager and they could travel to Council Bluffs from Omaha and they could be prosecuted in both jurisdictions and they would have a subsequent conviction. And I don't think that is the intent of the law. I think that what the Legislature intended was that if a person committed a second subsequent sex offense

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after being required to register that that person became a lifetime offender because they demonstrated that they could not control themselves. But I don't think you intended for them to be a lifetime offender for the same conduct. So I had suggested some language to take a look at in addition to...if we're going to require a person to register four times for the rest of their life, that they truly be a repeat offender and that they couldn't be ensnared by the same conduct. [LB460]

SENATOR ASHFORD: Thank you, Larry. Thanks for coming up. And you can provide that information--maybe you already have--to LaMont. [LB460]

LARRY NEELY: Thank you, Mr. Chairman. [LB460]

SENATOR ASHFORD: Thank you. Let's go to the next testifier. I think we are going to go to the light system now, but there may be questions. We'd ask you to confine your testimony to the lights, sum up when the yellow light comes on and then we'll go from there. [LB460]

SCOTT HELVIE: My name is Scott Helvie, H-e-l-v-i-e. I'm the Chief Deputy Lancaster County Public Defender appearing on behalf of Nebraska Criminal Defense Association board. We are here supporting the amendment, AM969, Senator Ashford's amendment to LB460. I think we believe that it will accomplish several things and correct several problems with the law. First, I think it's going to correct some technical problems with the way it was reenacted last year. It changes the three-day prior notification, the five-day postnotification. We've had a lot of problems with three-day prior notifications in our office especially with the type of population that we serve, a population with less resources. They tend to be much more mobile, move more quickly, move without advance notice and frequently are moving addresses in a situation where they don't even know they're going to be moving three days prior. So I think you're correcting some technical problems. Secondly, I think it's bringing proportionality back into the law. The misdemeanor registrant who is required to register for a misdemeanor offense under your amendment will now be charged with a misdemeanor for the first offense registration violation instead of a felony. That, I think, has some significant cost savings to the county. Primarily because of that but also because of some of the extended reach of the bill that was passed last year, our caseload with respect to sex offender registration cases doubled from last year. We went from 25 to 49 new open cases this year on sex offender registration violation. This year being 2010, primarily because of that change where attorneys are being appointed on felony-level offenses, sometimes weren't on misdemeanors, but also because of the broadening of the law. Probably more importantly, we think that the new...the amendment basically, which provides more restrictions on the applicability of the law, will permit the law to be applied more to those people that are most likely to reengage in the behavior and will allow people who had committed minor offenses and whose risk of recidivism are quite low to lead a much more normal life and be much more productive citizens. And I think that's just a

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summary of our position. I'm willing to answer any questions, but I do think it is an improvement over the changes made last year. [LB460]

SENATOR ASHFORD: And that means going back to the... [LB460]

SCOTT HELVIE: Going back to the way it was before basically. [LB460]

SENATOR ASHFORD: Okay. I don't think I have any questions. I think we're fine. [LB460]

SCOTT HELVIE: Thank you for your time. [LB460]

SENATOR ASHFORD: Thanks. [LB460]

SCOTT HELVIE: Okay. [LB460]

SENATOR ASHFORD: Do we have any other testifiers on either of these two amendments that would be generally for...yes, yes. Come on up. [LB460]

CAROLE DENTON: (Exhibits 9, 10, 11) Good afternoon. [LB460]

SENATOR ASHFORD: Good afternoon. [LB460]

CAROLE DENTON: I'm not an attorney and I'm not used to legal process so you'll direct me. [LB460]

SENATOR ASHFORD: Well, hopefully we're not going to be too legal process-driven here. [LB460]

CAROLE DENTON: Okay. [LB460]

SENATOR ASHFORD: [LB460]

CAROLE DENTON: Yes. [LB460]

SENATOR ASHFORD: But we really are just after your comments... [LB460]

CAROLE DENTON: Right. [LB460]

SENATOR ASHFORD: ...on either of the two amendments or both or whatever other comments you'd like to give us would be appreciated. [LB460]

CAROLE DENTON: Carole Denton, Grand Island, Nebraska, licensed Nebraska

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independent mental health practitioner. I've been in private practice for nearly 30 years, and I am for the amendment to change the SORNA laws as I understand it. And this is the handout so I'll keep it short. In my...we do sex offender evaluations and group therapy. Our practice treats men who are usually regress sex offenders, meaning that they have a preference for adult females but under depression, substance abuse, and poor judgment may offend a minor. So they come to us for treatment and do very, very well. We found that the new laws have, as I outline in my narrative here, has just cast them out of society, unable to find jobs. And I have some examples here. We have one client that served over 20 years in the military as an engineer, offended a family member, served 6 years in prison. He cannot find employment. He found employment in another county that would have used his skill levels and been good pay. But when they found out the sheriff would post it in the newspaper that a sex offender was working in that county, the employer couldn't hire him. It was too risky for his business. Incidentally, I just spoke to his probation officer about what his registration requirements will be, and I didn't...the probation officer said probably lifetime. I guess he'll make that determination. I'm not sure. Another man in his 20s worked at a factory in Grand Island, pretty decent pay, went to a party with 20s and teens, got drunk, became too aggressive to a teenager, charged with attempted sexual assault, in therapy, not high risk, cannot get...same factory will not rehire him because he's a sex offender. This factory will hire other felons, just not sex offenders. We have another man who worked in the human services field, college degree, been in the technological industry, had some kids over to his house too often, maybe grooming, charged with the offense and he now cannot find employment. And he's not high risk at this point. Then we have a second category of sex offenders in our group who have downloaded child pornography along with adult pornography. And I gave you a handout, "Facts About Child Porn Offenders," only about 2 percent ever commit a contact offense of child porn downloaders. They were caught to, I think it's called Operation Predator." We have a young man who was in high school when he was doing this, got caught just before graduation, turned 18, cannot find a job, has to live with his parents, lost all his friends, and he's on the registry for 25 years. [LB460]

SENATOR ASHFORD: Carole, let me ask you to do this, and we have the report. And does your report have examples, the examples that you've discussed? [LB460]

CAROLE DENTON: Yes. [LB460]

SENATOR ASHFORD: And that's helpful. I'm going to ask the committee members if they have any questions. Senator Lathrop. [LB460]

SENATOR LATHROP: I do have a question. And can you tell me to what extent does your profession...is your profession able to predict whether someone will reoffend? [LB460]



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CAROLE DENTON: At the end of this testimony, I recommend the establishment of a sex offender management board. Currently in our state sex offenders are evaluated by probation officers using risk assessments. Sometimes they are referred to psychologists who may give personality assessments, but it's not standardized. And so in my opinion what is occurring now is not as scientific and predictable as should be. [LB460]

SENATOR LATHROP: And you said you suggested a sex offender management board. The thought that's occurred to me and may be the solution is instead of going back, which is we're categorizing people according to their risk but not necessarily doing a specific risk assessment. Is that right? [LB460]

CAROLE DENTON: Correct. [LB460]

SENATOR LATHROP: And so we say, well, if you got caught doing something that would suggest that you're probably not a big risk, that's an offense that will put you in one category... [LB460]

CAROLE DENTON: Exactly. [LB460]

SENATOR LATHROP: ...but you may or may not be somebody who's a high risk or a low risk. [LB460]

CAROLE DENTON: Exactly. [LB460]

SENATOR LATHROP: Are you suggesting that we should have a board that does...let's people off the risk after they've satisfied some... [LB460]

CAROLE DENTON: Well, and better assessment because... [LB460]

SENATOR LATHROP: Who would do that assessment? [LB460]

CAROLE DENTON: I'm a licensed mental health practitioner. My husband is a licensed psychologist. We're trained in mental health. We've also taken special training in sex offender risk and treatment. [LB460]

SENATOR LATHROP: Okay. So talk to me about that. If we have somebody who is--and I see some of the people that testified here and I'm not going to single them out--that found themselves on this list and they came through your office or your husband's office, are psychologists or mental health professionals or psychiatrists able to be...to what level of confidence would an assessment provide us, the committee, or the society with a comfort level that somebody is not a risk to reoffend? [LB460]

CAROLE DENTON: Okay. It needs to be standardized. Right now a psychologist,

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psychiatrist will get a personality assessment and give their opinion. We use the personality assessment plus Abel screening which is...it's on my Web site, you can find it. It does computerized questioning for cognitive distortion. It also does what VRT, it's called...you have the men look at pictures, say what they think is sexy, but there's a timer going on they're not aware of, which picks up people pause more at things they're interested in. And it will pick up the people who are looking at kids. [LB460]

SENATOR LATHROP: All right. So if your tools are available and they become the standard... [LB460]

CAROLE DENTON: Yes. [LB460]

SENATOR LATHROP: ...and you have the board and you say somebody is not a risk, what's the chances they're going to reoffend? [LB460]

CAROLE DENTON: Very low because this group is low to reoffend anyway, 5 percent and less to begin with. And I've done some evaluations of men who are recommended be in prison, who are a danger, who cannot be trusted ever. But that's very, very small amount of people. [LB460]

SENATOR LATHROP: Okay. That strikes me as maybe a solution, a board that goes through these people one at a time instead of wholesale letting a group of folks out that may or may not be...may or may not belong on that. [LB460]

CAROLE DENTON: And ask and standardize the assessments so that...psychologists are able to do the assessment, but they've gone through the training and know how to assess scientifically and correctly. [LB460]

SENATOR LATHROP: Okay. Thank you. [LB460]

SENATOR ASHFORD: And to your point, under the LB285, the law now in effect, each person who comes under those provisions is registered in some way publicly for a period of some years. It may not be lifetime, but it's...can be a lesser period, 10 years or 25 years. [LB460]

CAROLE DENTON: Um-hum. [LB460]

SENATOR ASHFORD: And what you're suggesting is that the individuals you're looking at or dealing with now are individuals who are very low risk but are on a public registration. Correct? [LB460]

CAROLE DENTON: Well, and this... [LB460]

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SENATOR ASHFORD: Or they're publicly registered somehow. [LB460]

CAROLE DENTON: This is neither here nor there, but I don't understand why someone who is low risk, 2 percent risk to reoffend, why the public needs to be notified because they usually offend people they know anyway. []

SENATOR ASHFORD: And would you just make...would you extrapolate on it just a bit, not in long division, but I know we've heard this a lot that it's usually individuals that they know or in their family. [LB460]

CAROLE DENTON: Ninety-three percent of... [LB460]

SENATOR ASHFORD: And that's based on... [LB460]

CAROLE DENTON: ...sex offense for children is on a scientific study I got in my research from ATSA... [LB460]

SENATOR ASHFORD: Can you tell us what that is? [LB460]

CAROLE DENTON: Let me look at it. It's the...it's on the handout... [LB460]

SENATOR ASHFORD: Okay, so you have the information. [LB460]

CAROLE DENTON: ...is the American Treatment... [LB460]

SENATOR ASHFORD: Okay, ATSA, A-T-S-A. [LB460]

CAROLE DENTON: Association for the Treatment of Sexual Abusers. Okay, so it's...they have...they're international. I got my statistics from them. And 93 percent of sex offenders offend people they know. [LB460]

SENATOR ASHFORD: And I think what's problematic for some of us is that under the old system those sorts of considerations were taken into account by the State Patrol. There was an appeal process and there was a psychiatrist, I believe, that looked at some of these cases or all of these cases. And we'll maybe hear more about that. And I think that sort of analysis did occur prior to January 1 of 2010, I believe, and so we're talking about post that. These are people who very likely would not have been publicly registered but now are. [LB460]

CAROLE DENTON: No. And in my opinion, why put them on the public register if they weren't predators to begin with and didn't seek out strangers? [LB460]

SENATOR ASHFORD: Carole, thank you very much. How many other people are here

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to talk sort of generally in favor of these two amendments? Why don't...why don't we...Alan (phonetic), you're not going to talk on it. Why don't we just take...we're going to just take one more for now and then we're going to ask the others because we have a short period of time. Could we get one other testifier and then we're going to go...yeah, why don't you come on up and then we'll ask Attorney General's Office and State Patrol and others who are here to comment. [LB460]

DAWN BUELL: Hi. [LB460]

SENATOR ASHFORD: Hi. [LB460]

DAWN BUELL: My name is Dawn Buell. I'm from Lincoln, Nebraska. I'm here representing a family, and I'd like to make three points today. One would be LB285's disservice to the community at large. The second point would be to strategically use the law enforcement resources that we have. And the third point would be LB285's impact on victims. I have an adult male family member who nine years ago offended against another family member and actually turned himself in at that time to the authorities. There's something that is called a Static-99. Maybe you've heard about it. It's a risk assessment tool. It's an actuarial assessment tool using logarithms that predict recidivism rates with sex offenders. It's used by the Nebraska State patrol. At the time that he turned himself in and went through all of the diagnostic questioning, it turned out that he as at a risk of 5 percent or less to reoffend and was categorized as a Level 2, excuse me, a Level 1 sex offender. And that was...that category actually comes after they undergo treatment. Unfortunately, at the time of his sentencing, about a month before, national media attention was given to the crisis in the Catholic Church and the difficulties and the secretiveness with some priests reoffending young parishioners and things like that. So at the time of his sentencing, the judge actually went above and beyond what the prosecuting attorney for the state was recommending, and he was sentenced to well above probation and things that were originally thought. LB285, one of the parameters in that thing is that whether or not you're on the Internet is based on how long was the sentence that you received. If you received 18 months or more, you're automatically on. So nine years ago this person was classified as Level 1 and ended up now being on a registry for life. So you have a complete flip-flop of what the state originally said was the risk assessment to what now is posted on the Internet. I believe that this is not a strategic use of law enforcement because we have law enforcement now knocking on doors every three months for people that have been determined as less than 5 percent of a risk. But the biggest thing is the impact on the victims. As the previous testifier mentioned, 93 percent of sex offenders offend against family members. And what happens is when you post them on the Web it brings incredible pain to those victims. I can tell you that from firsthand experience in listening to the young people that I know and that are in my life. It brings incredible pain to have that brought up, and really it is a revictimization by the state of these very vulnerable victims. And so I would ask that you consider repealing and going back to something that would

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be actually helpful to the community to know who is actually dangerous, who is likely to reoffend and not further penalize victims. Any questions? [LB460]

SENATOR ASHFORD: Thank you, Dawn. Are there any questions of Dawn? I don't see any. Thanks for coming over. We appreciate it. [LB460]

DAWN BUELL: Thank you. [LB460]

SENATOR ASHFORD: All right. Why don't we ask if...I see the Attorney General's Office is here. Why don't we start with the Attorney General's Office and then we'll go to the... [LB460]

JOHN FREUDENBERG: If it's okay, we'll start with the County Attorneys Association and then the Attorney General's Office. [LB460]

SENATOR ASHFORD: Oh. Okay. I'm not really the boss I thought I was. [LB460]

BRUCE PRENDA: They're asking that I go first, but... [LB460]

SENATOR ASHFORD: No, I'm happy to start with the County Sheriffs Association. They're certainly credible. [LB460]

BRUCE PRENDA: I'm not feeling much love right now but that's okay. [LB460]

SENATOR ASHFORD: They're certainly credible individuals. [LB460]

BRUCE PRENDA: (Exhibit 12) Good afternoon. My name is Bruce Prenda and I'm here on behalf of the Nebraska County Attorneys Association. I've handed out my written comments. I won't read those into the record. I can give you a short summary of what the County Attorneys position is in opposition to these amendments. What I put in the statement is, in short, I think our position is that we need to get this right this time. The Nebraska Sex Offender Registration Act is a difficult law to enforce. It's difficult to enforce because of the number and substance of the changes that have been made over the past several years. More change, especially immediate and dramatic change, is only going to be compounding the difficulty that county attorneys have enforcing the law. And as you are aware, with every change that's made to this law, multiple legal issues arise. And as those issues arise, ultimately it affects the way we enforce the law, the effectiveness of the law itself, and our ability to prosecute those offenders that present the risk of harm to the public. And so that is the summary of the County Attorneys Association position. [LB460]

SENATOR ASHFORD: Senator Lautenbaugh, let me ask one quick question and I'll turn it over to Senator Lautenbaugh. Thank you for your comments, Bruce. The...and

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you were prosecuting cases under the old law as well I assume. [LB460]

BRUCE PRENDA: Yes. [LB460]

SENATOR ASHFORD: The Level 1 sex offenders under the old law were determined after the prosecution to be at low risk to reoffend. Putting those people on a public registry under law LB285 is a change, no question about it, a change that we dealt with because of federal Adam Walsh Act compliance requirements I think or maybe other public policy reasons. Having those people on the public registry that were assessed at being low risk, how does that...I mean, how does that help you enforce the law or how does that make the public any safer to have those people on that registry? [LB460]

BRUCE PRENDA: Really the risk assessment and the things that happen after they've been placed on the registry don't have as much of an effect on our job. The things that affect us and our ability to enforce the law are...well, just narrowing it down to elements of the offense. We have to show that they were notified of their obligations under the act. Over the years, various offenders have been notified of various things. Just this year with the changes, they've been notified of certain obligations. When the law changed, it required verification, for example, people who had to come in every four months or who had to come in every six months, they had to come in, in person. January of 2010 the State Patrol referred, just in Lancaster County, I want to say 30 cases of people that they said were not in compliance with the verification provision. Those are the 30 cases that I had to review and sort through and find out whether they've actually been notified of the changes that were made in order to go through with the prosecution. And we couldn't prosecute those cases because we couldn't show that they had been notified of the changes and that subsequently they had been in intentional violation of the act. And so notice and intent are the two critical elements that we look at when we're enforcing the law. So we spent 2010... [LB460]

SENATOR ASHFORD: And these are violations of the registry itself... [LB460]

BRUCE PRENDA: Violations of the registry itself, that's correct. [LB460]

SENATOR ASHFORD: ...as opposed to the underlying public disclosure of these individuals. [LB460]

BRUCE PRENDA: Right, right. [LB460]

SENATOR ASHFORD: That's a different issue. [LB460]

BRUCE PRENDA: That really is...that's a different issue from our perspective. [LB460]

SENATOR ASHFORD: And you're...okay. Senator Lautenbaugh. [LB460]

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SENATOR LAUTENBAUGH: Actually, thank you. You covered it, Mr. Chairman.  
[LB460]

BRUCE PRENDA: Yeah, our perspective is more on enforcement of offenders...  
[LB460]

SENATOR ASHFORD: The existing law. [LB460]

BRUCE PRENDA: Right and our ability to hold offenders accountable for being in violation, not reporting their residences, employment information, etcetera. And the amendments strike, I would just add, strike several of the offenses for which people are required to register. So in 2010, for example, I would convict someone of electronic device...communication by electronic device and they would be subject to the registry in 2010. If that particular offense is stricken from the law and doesn't require registration, I don't know what happens to those individuals or other individuals similarly situated.  
[LB460]

SENATOR ASHFORD: However, if wouldn't...if we limited it to any changes going back to the old law to prior to January 1, 2010, that would have little impact on what you do now I assume because... [LB460]

BRUCE PRENDA: Right. [LB460]

SENATOR ASHFORD: Yes. Senator Harr and then Senator Council. [LB460]

SENATOR HARR: Thank you, Senator Ashford. I appreciate this argument you're making today about how many times we change a law and it always creates loopholes. I think it's very important, especially as we go forward changing our DUI laws it seems like about every year, and it always creates loopholes. So I think it's important that we have consistency, we come up with a policy, and then we enforce that policy and see the ramifications of it before we go forward to change the bill again or the law again. My question for you is, you have stated the law has been changed six times in the last seven years. Do you know how many times the County Attorneys Association has come out opposing any one of those six bills? [LB460]

BRUCE PRENDA: No. [LB460]

SENATOR HARR: Okay. Do you know if they have opposed those? [LB460]

BRUCE PRENDA: I do not know. [LB460]

SENATOR HARR: All right. I just find it a little convenient sometimes that we use this

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argument when we're ratcheting down an offense. I never hear that argument when we're ratcheting up. And that's just more of a point. I'm not attacking you. I just...it's more for the record and I appreciate that. Now as the County Attorneys Association opposes this, do you know do they have any ideas? Is it their belief we should keep the current bill or law as it is? Or is it the belief of the County Attorneys Association that we need to come up with comprehensive change? [LB460]

BRUCE PRENDA: I can say that the policy decision ultimately, obviously, is your decision. What the position of the association is, is that it would make our jobs a lot easier if we knew what that policy was, that that policy remain consistent for a period of time, and that we be allowed or be able to consistently enforce that law pursuant to the policy that's been stated. With the number of changes, it makes it difficult. And I'm not testifying that this is exclusively a county attorneys' position only exclusively. I've talked with defense attorneys, judges who are handling these cases as well and expressing to me their frustration with the numbers of changes and the things that keep coming out of the Legislature. When I listened to Mr. Helvie--Mr. Helvie is a colleague of mine--we handle cases together, I don't disagree with what Mr. Helvie said. I think Mr. Helvie would be the first person to acknowledge some of the same concerns because when he has to advise his client on the consequences of the plea or the conviction, he needs to have something to rely on to make sure that he's properly advising those clients. And I think he would testify that the constant change does make that more difficult. And so I'm not necessarily saying that the changes themselves are bad changes. All I'm saying is that if this is the direction you want to go, then let's do it. Let's do it well. Let's do it so that there are not inconsistencies in the language and we don't affect other areas that we have to come back and do again next year so. [LB460]

SENATOR HARR: Thank you. [LB460]

BRUCE PRENDA: Okay. [LB460]

SENATOR ASHFORD: Fair comment. Thanks. Senator Council. [LB460]

SENATOR COUNCIL: Thank you. Thank you, Mr. Prenda, for appearing and testifying. And I appreciate your remark about policy because I think that's the reason we're here again. I believe that the Judiciary Committee as it was constituted felt it was establishing a policy under LB285 that would address the concerns about registration. And one of the concerns of the committee, and I don't mean to speak on behalf of the committee, but as I understood one of the concerns of the committee was enacting a law that was going to change retroactively what people had been led to believe and what their expectations were. And clearly that's what has occurred with the action we took in 2010. And I think if you go back and look at the transcript of the hearing there was a lot of concern about the situation involving someone who had entered into a plea agreement, and the basis for entering into that plea agreement had to deal not only with the



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sentence but the charge and what that charge meant in terms of sex offender registration requirements. We changed that. And people who thought they were on for 10 years now find themselves on for life and even more drastic examples that have been provided. And in looking over a lot of the material we received on this, it's my understanding, and correct me if I'm wrong, that the County Attorneys Association also has difficulty with what the committee is attempting to do here, which is to preserve what rights or responsibilities existed prior to enactment in 2010, leave that status quo remain and then move forward. Am I correct in my understanding that the association has a problem with coming up with some means of providing for that correction so that people who entered into plea agreements agreed to certain specified charges based on length of sentence and specifically registration requirements are not now finding themselves subject to new and expanded requirements? Does the association have a problem with doing that? [LB460]

BRUCE PRENDA: I think...I haven't had a chance to talk with the association as a group because of the timing of this. But I can say that there is some disagreement about the effect of the amendment. Some of the attorneys believe that Senator Ashford's concern is a real concern. You're creating two classes of people who may be similarly situated. In other words, they may...the folks who are subject to the old law and the folks who are subject to the new law may be individuals who were found guilty or pled guilty to exactly the same offense and yet they're going to be treated differently because one will get off the registry sooner than the other. That's a situation that may come up with that amendment. And so it seems to me that some of those concerns are real. Others in our association are not concerned about that. So it isn't our position that we shouldn't address the concerns of the individuals that you're talking about because clearly there are people, and I've got a case pending right now in Lancaster County where the person was 9 years and x number of months from getting off the registry and then January hit and he's finding himself subject to 25 years so another 15 years. The person didn't have any violations so luckily that person's attorney took advantage of the expungement provision and filed the lawsuit in December before the new law took effect so that preserved his right to challenge that decision. Other people were not that fortunate and so they find themselves in the situation that you're mentioning and trying to address. And I think the association would agree that that's a perfectly legitimate issue for this committee, for the Legislature to address because it does seem on its face to be patently unfair. [LB460]

SENATOR ASHFORD: And that's...and thank you and I thank Senator Council for framing the question the way she did because clearly I think that is certainly my concern. I mean look at it in any objective way and you see some just incredible unfairness in that process. Not getting into an argument about whether or not you have registration laws and whether or not somebody is less or more likely to reoffend, those are deep issues. But really just the unfairness on its face, and I appreciate your candid answer to that. Any other comments? No. Thanks, Bruce, very much. [LB460]

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BRUCE PRENDA: Okay. And we'll do what we can to help you out. [LB460]

SENATOR ASHFORD: Right. And hopefully we can try to be consistent or more consistent or whatever. Yes. [LB460]

COREY O'BRIEN: We made Bruce go first so I can get up and just say ditto. Chairman Ashford, members of the committee, my name is Corey O'Brien and I'm an Assistant Attorney General with the Nebraska Attorney General's Office, here testifying in opposition to essentially AM969. The first concern that the AG's Office has is that in the proposed amendment a bill that my office worked on in 2007, the enticement by electronic communication device, that bill...that statute under the proposal in AM969 is stricken from inclusion in the registration...registrable offenses. I can tell you anecdotally--and Bruce can probably tell you as well--the behavior that we sought to curtail by the passage of that statute in 2007 was directly aimed at what we refer to as grooming behavior of hands-on predators. The hands-on predators that I personally have been involved in since the passage of that law that have been charged with this offense I would say 4 out of every 5 of them have been actual hands-on predators. There is a lot of talk about these computer-based crimes such as child pornography, on-line enticement and whether or not they prove to be a real threat and should be included under our registration laws. My experience and what the studies tell us is that there's a very famous federal study that came out a couple of years ago about child pornographers and how 70 percent of child pornographers, according to the study, and those engaged in on-line enticement actually had committed or after their offense committed a hands-on "predation" of a child. So that is why we asked to have them included in the registration offenses. My office's position here today is we have some concerns with the bill, I'm sorry, the amendment. The concerns are largely things like I talked about with the exclusion of the registration offense. But more telling is, you know, we did not work on LB285. But... [LB460]

SENATOR ASHFORD: No, I'm not...no, that's fine (laugh). [LB460]

COREY O'BRIEN: But I want to say that, you know, there was a lot of time and effort and thought that went in...the people that worked on LB285. [LB460]

SENATOR ASHFORD: I was laughing with you. You weren't laughing but... [LB460]

COREY O'BRIEN: Okay. We would like to see... [LB460]

SENATOR ASHFORD: And my point is I appreciate your comments on the enticement statute because I think what we were trying to do is raise, with these two amendments, is raise the overall issue that some of what has been talked about. [LB460]

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COREY O'BRIEN: And what I guess my point is, the same as Bruce's, is that what we would like to see is if we take this hybrid approach trying to mesh the old with the new we just need to make sure that we remain consistent; that we make sure that all the components of what we're trying to accomplish with the old and the new fit together because I think that there are some locations in there that could lead to some unintended consequences. My final comment, the office's position is, is that we believe that the subjectivity in the assessment process that inherent in the proposal in AM969 regarding the subjectivity of whether or not somebody will reoffend rather than a scientific approach compromises public safety. Thus, we do believe that the offense-based approach that LB285 took eliminates some of that subjectivity and also gives more certainty as to public safety. That's essentially our office's position on that. [LB460]

SENATOR ASHFORD: Yeah. Let me just follow up and then I'm going to turn it over. And I get that. I get the offense-based approach. I think my questioning and concern was more about the...I don't think it was...in talking to State Patrol, I never got the impression that it was not an in-depth, scientifically based approach. I mean they had studies to go on and I think did very thorough reviews of these cases and came up with these degradations. So I think that whether there is a better way or not, I think that that was a thoughtful process. And I think again when we're talking about the cases that Senator Council has mentioned and Bruce referred to I think some of those cases are...my concern is less about what offenses are in there and more about the unfairness or the unintended consequence of what happened in LB285. [LB460]

COREY O'BRIEN: And certainly we would be more than happy to be involved in those discussions in terms of alleviating some of those concerns as well. [LB460]

SENATOR ASHFORD: But I understand your comments. Yes, Senator Lathrop, then Senator McGill. [LB460]

SENATOR LATHROP: Do I...when you say the subjective nature, you heard me talk to the licensed social worker a moment ago about testing people to see if they can determine in a standardized process whether they are at risk to reoffend, you do not favor that approach? Because one of the things that I'm hearing today is, okay, go ahead and make some changes. We agree that there's things that are unfair about this, just don't make a mess of it. And one approach, of course, would be to leave things just the way they are and set up a board and let people satisfy the board with psychological or psychiatric evidence from the standardized testing that they deserve to be off, that they're no longer a risk. And do you have an objection with that approach or does the office have an objection to that approach? [LB460]

COREY O'BRIEN: It's more so that if you read the language of the statute it's almost like there are certain portions in the assessment process that are designed to be more

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of a gut instinct than anything based upon actual findings. [LB460]

SENATOR LATHROP: Well, I would agree gut instinct is a poor approach. But if they have standardized testing which we...and I don't know the subject matter. I've not looked at...I know as much as what you heard here this afternoon. But if there are standardized tests and they are recognized as capable and reliable in determining whether somebody is at risk to reoffend, if we had a board, people went through the testing and then appeared before the board and had their name removed, would you have a problem with that approach? [LB460]

COREY O'BRIEN: To be perfectly honest with you, I haven't discussed that with other members of my office. [LB460]

SENATOR LATHROP: Okay, that's fair. [LB460]

COREY O'BRIEN: I haven't really thought about it myself other than, you know, we do believe from a fairness standpoint some type of system that's based upon offense seems to be fairly equitable in terms of its application in the law and making sure that we're consistent rather than making these gut instinct decisions. So I mean I think that's more what we're opposed to is some of those... [LB460]

SENATOR LATHROP: Is there anything that's on the list right now that you would take off? [LB460]

COREY O'BRIEN: On the registrable offenses? [LB460]

SENATOR LATHROP: Yeah. If you said that then you would make it offense-based and not subject to testing where people might come. So is there something on that list that you take off (inaudible)? [LB460]

COREY O'BRIEN: In terms of what's in LB285 or what was added into LB285 I think there's probably some things there that muddled the law that could be talked about. [LB460]

SENATOR LATHROP: When you say muddle, are you saying that there are people that that approach, LB285, and the list...the expansion of the list of offenses that would get you on the registry, you think some of those offenses don't rise to the level that should put people on the registry? [LB460]

COREY O'BRIEN: Let me put it this way. I think that we ought to make very thoughtful consideration of deciding whether we do it through empirical study or whatnot, what offenses tell us that people are higher risk and should be included on the registration offense. Is there anything out there that says that somebody that commits sexual

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assault of a child is more likely to reoffend than someone that commits kidnapping, are they likely to commit an offense? And I think that that is something that when we talk about the offense-based approach that we ought to always look at that and make decisions, not based upon, you know, it's a popular decision to put somebody on the registry because they've committed kidnapping but because we have some evidence to say that a person that commits kidnapping is more likely to reoffend against a child or commit a sexual offense. So I think that that's a process that should be engaged in. [LB460]

SENATOR LATHROP: Okay. If we are to take a thoughtful approach and sort through which offenses predict who might be at risk to reoffend, who should do that? Should that be done by your office? [LB460]

COREY O'BRIEN: I think ultimately again we're talking about public policy issues. [LB460]

SENATOR LATHROP: Don't say the Legislature. You're not saying the Legislature because we don't have the specialized knowledge to make that judgment. It's got to come from the chief law enforcement officer of the state perhaps or tell us what that process should look like because what we don't want to do is make a change and have people come back and go, for God's sake, you let some sex offenders off the registry and, you know... [LB460]

COREY O'BRIEN: I don't know that we're qualified independently to make that judgment. [LB460]

SENATOR LATHROP: Okay. Well, everybody is saying we shouldn't muddle this up this time around so who do you think we should talk to about it? [LB460]

COREY O'BRIEN: You know, I haven't really thought about that. But I think that, again, I think we should engage in a process that, you know, our office has talked about engaging in a process to try to get this right, as Bruce put it. [LB460]

SENATOR LATHROP: And I'm not trying to trap you. [LB460]

COREY O'BRIEN: No, I know. [LB460]

SENATOR LATHROP: I appreciate the remarks of Mr. Prenda and now you. But what I'm looking for is, okay, so if you're telling me it needs to be based on the offense, then who do we go to, to get the list? Because looking around here and, well, Senator Harr was a prosecutor and I don't know if he ever did sex crimes, but I certainly... [LB460]

SENATOR HARR: Never convicted. (Laughter) [LB460]

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SENATOR LATHROP: I meant prosecuted, Senator. [LB460]

SENATOR HARR: Oh. [LB460]

SENATOR LATHROP: Not engaged in any. [LB460]

SENATOR HARR: Oh, I'm sorry. [LB460]

SENATOR LATHROP: I have another... [LB460]

SENATOR ASHFORD: How do we strike things from the record here? [LB460]

SENATOR LATHROP: Let me just say that the door is open over here in the Judiciary Committee because if we're going to do a fix and everybody is admonishing us to do it correctly, then what we want to do is not draw the lines based upon somebody we know may be on one list or another, which should be less of a concern than making the list a good predictor of the likelihood to reoffend. Would you agree with that? [LB460]

COREY O'BRIEN: I think that's a wise approach. [LB460]

SENATOR LATHROP: And can we have you work with the Judiciary Committee at least to tell us who we should go to for that list? Because when we're done, I think it's incumbent on the Judiciary Committee to look to the chief law enforcement officer and say, do you agree with the list or don't you? So that we're not doing something that people come in and go, well, you screwed that up. [LB460]

COREY O'BRIEN: Can I get back to you after I talk it over with the AG? [LB460]

SENATOR LATHROP: Absolutely, absolutely. I got one more question. [LB460]

COREY O'BRIEN: Okay. I don't want to get in too much trouble. [LB460]

SENATOR LATHROP: No, no, no. And I appreciate that it's a sensitive subject and I can't get you to commit to something for reasons that are clear. Are we getting out of...if we make changes, are we getting out of compliance with Adam Walsh and what's the consequence of that? Or do we care? [LB460]

COREY O'BRIEN: You would have to ask the SMART Office, which is the sex offender management and registration office of the federal government. And I don't even know how they operate. I don't know what it takes to be in substantial compliance or not. I know right now we're not as far as I've been told. [LB460]

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SENATOR LATHROP: That we're... [LB460]

COREY O'BRIEN: That we are not in compliance; that we are not in compliance, substantial compliance. I don't know what it takes. [LB460]

SENATOR LATHROP: Is there some money at stake over this? [LB460]

COREY O'BRIEN: You know, at one time I was told that--and I don't have firsthand knowledge of that--that we would lose some Byrne Grant funding if we did not it by a certain date. But I don't know whether or not that is still the case. [LB460]

SENATOR ASHFORD: I think the number we keep getting is \$185,000. [LB460]

SENATOR LATHROP: I thought that's why we did this. [LB460]

SENATOR MCGILL: Yeah, it is solely for... [LB460]

SENATOR LATHROP: Well, for any help you can give us as we tread into this area would be greatly appreciated. [LB460]

COREY O'BRIEN: I look forward and I know the entire AG's Office looks forward to working to not create problems but create solutions on it. [LB460]

SENATOR LATHROP: Thank you. [LB460]

COREY O'BRIEN: Thank you. [LB460]

SENATOR ASHFORD: Corey, thank you for your comments. Senator McGill has a question. [LB460]

SENATOR MCGILL: And mine isn't so much of a question but just wanting to go on the record with some of my views on this since we're having a public hearing. And that first off, I have no problem with including some of those crimes in the list. But then my problem is similar that we're still like one size fits all regardless of what type of crime that you're on there for 25 years. And we've had some great people testify who made a mistake within their youth and then became very successful businesspeople in their community until boom, they're on the registry publicly suddenly. And so I also for many people who are currently on it that aren't likely to reoffend because I think most people who are currently on this system aren't likely to reoffend, it prohibits them from being active citizens and get in a job that they need. We want people in jobs and not living on welfare and not unable to find work because they're very unlikely to offend. But, oops, you're on this but you made a mistake in your youth and, you know. So I want to find something that makes that...that has that balance so someone who isn't likely to

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reoffend, you know... [LB460]

COREY O'BRIEN: And I think every prosecutor or person involved in the criminal justice system, Senator, can tell you that it's a hard balance. I mean I find myself sitting at sentencing thinking I'll never see this guy again and two months later he's back. [LB460]

SENATOR MCGILL: And when it comes to... [LB460]

COREY O'BRIEN: And, you know, then you see guys that, oh yeah, he'll be back and they live model lives. So it is a very difficult thing to do. [LB460]

SENATOR MCGILL: Well, we have a broad, broad range of crimes that fall into this right now and part of that's due to the federal government and suggestions from the Adam Walsh Act. But I think it's too broad for us not to be looking at the likelihood to reoffend. Now when we do have so much data about how if you're actually abusing a child it's someone you know and not a stranger. And the people that you know, I mean you know that your uncle is on the registry or not or has committed this sex crime and has been convicted of that. When you see the people and when there's overwhelming statistics like that, it's hard for me to buy any argument that's fully based on the crime that you've been convicted of. [LB460]

SENATOR ASHFORD: Senator Council. [LB460]

SENATOR COUNCIL: I just want to follow up on something Senator Lathrop was sharing. And I appreciate the concern about the subjectivity of the assessments that were performed under the old system. But how do we avoid subjectivity even under the offense-based system? Because someone has made the subjective determination that if you commit x offense you're at risk to children and families for x period of time. I mean that's as subjective as I think you can possibly get. And if you can, it's a follow-up to Senator Lathrop, somehow we can be a little more objective in making these links, and I'm going to tell you one of the offenses that troubles me most is first-degree sexual assault or sexual assault of a child in a Romeo-Juliet situation. Because just by virtue of that charge, the underlying circumstances are irrelevant. And correct me if I'm wrong, that's lifetime registration? [LB460]

COREY O'BRIEN: Under the current, under LB285, yes. [LB460]

SENATOR COUNCIL: Under LB285 that's lifetime registration. And, you know, as a policymaker when I... [LB460]

COREY O'BRIEN: If the child is 12 or under I think is what... [LB460]

SENATOR COUNCIL: But if it's... [LB460]



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COREY O'BRIEN: I think it's first-degree, you're right. [LB460]

SENATOR COUNCIL: I think it's first-degree sexual assault. [LB460]

COREY O'BRIEN: It's first-degree sexual assault, you're right. [LB460]

SENATOR COUNCIL: If you're charged with first-degree sexual assault, you're lifetime. [LB460]

COREY O'BRIEN: Yep, you're right, you're right. [LB460]

SENATOR COUNCIL: And that's the problem... [LB460]

COREY O'BRIEN: First-degree sexual assault of a child. [LB460]

SENATOR COUNCIL: Yeah. That's the problem I have with, you know, the system under LB285 because we don't get to drill down, you know, to determine the...what were the circumstances, not to suggest we condone them, whatever those circumstances were, but we talk about the registry serving as a civil sanction, notification thing. It becomes out and out punishment in addition to whatever sentence the individual gets to have to be on the registry for the rest of his, because it's rarely a her, but his or her life. And for me that's problematic because we don't get to drill down. And other things (inaudible) the safety and security of the public with the way the system is under LB285, everybody is on. So I don't know who to protect. I mean I don't know who to really be concerned about. I mean I'm now viewing everybody on there as somebody at risk to me and my family when the great likelihood according to the data is that maybe only 4 percent of them are somebody I need to be concerned about. But everybody is out there. So I'd like for us somehow strategically to strike that appropriate balance and, you know, to provide individuals who have committed these offenses who are not risks of...at risk of reoffending or pose no risk to public safety in general that we have some way to address it short of, particularly in the case of Romeo and Juliet cases, lifetime placement on the sex offender registry. That's problematic for me. So whatever we do, that's one of the things I'd like to see us address in addition to addressing this retroactive application on the offense. If we stay with an offense-based and I pled to an offense and at the time I pled to it was not a registrable offense, I think it is patently unfair now for me to be required to be on the registry. So those are the two things I think we need to talk about. [LB460]

SENATOR ASHFORD: Senator Harr. [LB460]

SENATOR HARR: Thank you, Senator Ashford. First of all, I need to defend William Shakespeare. I don't think he was of age and a minor. He didn't write sexy stories like

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that. [LB460]

SENATOR COUNCIL: That Romeo and Juliet stuff wasn't him? I'm kidding. [LB460]

SENATOR HARR: Yeah. [LB460]

SENATOR ASHFORD: I'd have to go back and get the ages. [LB460]

SENATOR HARR: We might have to ban that book otherwise and it would be banned. [LB460]

SENATOR ASHFORD: Corey, let me...I'm sorry, Senator Harr. Go ahead. [LB460]

SENATOR HARR: Wait, but I do have some questions seriously and I want to clarify the record. You in your speech talked about enticement, an enticement federal study. What is the name of that study just for the record? [LB460]

COREY O'BRIEN: I know Johnson is in the first name. It was conducted by the federal Department of Corrections. [LB460]

SENATOR HARR: Okay, so we can look it up. You can get back to me on that. [LB460]

COREY O'BRIEN: I can get it to you. [LB460]

SENATOR HARR: You can get back to me on that then. [LB460]

COREY O'BRIEN: I can get you the study itself. [LB460]

SENATOR HARR: Okay. And then just following up on what Senator Lathrop said, I agree it's very difficult to determine future actions. You and I have both been there. We worked together. We can't do that. I mean it's darn near impossible. And the times they screw up, you know, getting back to DUI laws we have, you know, Mark Dahir in Omaha. So that's very difficult, but that doesn't mean we shouldn't try that. And I think you talked about you liked offense-based better than testing of individuals. You thought that might be too subjective. I would just ask you to keep an open mind. And I think as we work together hopefully your office will work with the Judiciary Committee and we can come up what is the best practices. And it may be offense-based or it may end up being a testing, but I just ask that you keep an open mind on that. Then finally, I'm going to actually address LB460, the amendment to LB460. And now I got to find what I had...oh, I had a question. So does this apply...currently if you're before 1990...January 1, 1997, does LB265 apply to you? [LB460]

COREY O'BRIEN: LB265? [LB460]

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SENATOR ASHFORD: LB285 but prior to... [LB460]

SENATOR HARR: The prior...the Adam Walsh Act, the change. [LB460]

SENATOR ASHFORD: Or prior to the enactment of our first... [LB460]

COREY O'BRIEN: Does it apply to who? [LB460]

SENATOR HARR: To anyone prosecuted before January 1, 1997, to your knowledge. [LB460]

COREY O'BRIEN: I know there were discussions going on of whether or not to go out and register people that never had to register before. And perhaps Colonel Sankey can address that. I don't know whether or not they actually went out and found people that were never made to register and make them register. It is my understanding at one point they weren't going to do that, but I don't know whether they did or not. [LB460]

SENATOR ASHFORD: Well, some question about whether they were registered in some other state as well. [LB460]

COREY O'BRIEN: Well, if they were required to register in another state I think it does apply to them. [LB460]

SENATOR ASHFORD: Right. I think they...for offenses prior to that if they were registered somewhere else. [LB460]

COREY O'BRIEN: Right. But I mean if they've never had to register in Nebraska, I don't think that, at least to the best of my knowledge, and again Colonel Sankey can probably address this, they went and rounded people up and said now you have to register for the first time in your lives. [LB460]

SENATOR HARR: Okay. I'll get back to you on that one. Okay. [LB460]

SENATOR ASHFORD: Corey, and honestly I'm very appreciative of your offer. We're going to get this right. [LB460]

COREY O'BRIEN: I don't know if I can make a formal offer but, again, on behalf of my office, again, I think there's discussion purposes here. [LB460]

SENATOR ASHFORD: Well, as far as it goes, we're going to communicate with your office. [LB460]

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COREY O'BRIEN: And before I commit further, I will speak with the AG. [LB460]

SENATOR ASHFORD: Well, I understand your point. I just...but I think the committee is two things. First, maybe only one thing, but again every time we get some sort of directive from the federal government that says we ought to do X, Y, and Z, if nothing else this lesson tells us...this is a lesson that says, no, Nebraskans can work their own issues out. And I think that's a lesson to me. But anyway, thanks for your candor and all the work you do do to keep people safe. Thanks. [LB460]

COREY O'BRIEN: You guys, too. [LB460]

SENATOR ASHFORD: All right. Next. How many people do we have? Colonel, are you going to speak? [LB460]

DAVID SANKEY: Yes, sir, neutral. [LB460]

SENATOR ASHFORD: Okay, good. [LB460]

AMY PRENDA: I will be very brief. Amy Prenda, A-m-y P-r-e-n-d-a, testifying in opposition to the amendments before you on LB460 on behalf of the Nebraska Sheriffs Association. Again, the sheriffs aren't taking any position on what public policy position you decide to take. Their concerns are (1) I did hear back from some sheriffs that think it will be complicated to try to enforce two separate registries. Another thing that they wanted the committee to consider is that under LB285 the initial registration was with NSP and they would like to continue to have that with NSP. They'd also like that the "in person" be put back into the legislation and not revert back to the "in writing." It's my understanding there are instances where sex offenders would put it on a napkin, stick it in the door of the sheriff's office, and that would be their notification for moving. They do have some concerns with changing the three-day notification to five-day notification. Their fear is that that could be a window of ten days where the offender could be held unaccountable for where he is. I'd be happy to answer any questions, but that's just briefly some of the concerns that the sheriffs have. [LB460]

SENATOR ASHFORD: Yes, Senator Council. [LB460]

SENATOR COUNCIL: Yeah, and thank you, Amy. And the concern about dual registration systems. [LB460]

AMY PRENDA: Um-hum. [LB460]

SENATOR COUNCIL: How else can we address this issue of not having retroactive application to alter what individuals may have entered into in terms of plea bargains? I mean if we don't address that, okay, then you have a singular system. But in order to

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address that, we inherently have to have a dual system. [LB460]

AMY PRENDA: And I...in all fairness, this is a week's worth from public hearing to notice to hearing. And after hearing the gentleman who testified in support of the legislation from New Mexico, he says that in their state they are doing the dual registry. So I am not testifying that it isn't a possibility. I'm only giving you feedback from what I've heard from the sheriffs in this week time. And we very well may be able to find...figure out a way of administering a dual registry that would be manageable. [LB460]

SENATOR COUNCIL: Okay. Now and the issue about the reporting move, the current LB285 says three days before. [LB460]

AMY PRENDA: And three days after I think there's sort of, yes. [LB460]

SENATOR COUNCIL: Okay. And the amendment says five working days after. Is there some middle ground there? I mean I always had the concern and I shared...and whoever was speaking in support of this talked about the mobility of individuals and not being in a position to definitively say five days, three days in advance that this is what my new address is going to be. Would the sheriffs have...be willing to support some period of time after the person has obtained a new residence as...if it's a length of time, maybe we can deal with it. I'm concerned about the timing. I mean for those who are in a position to notify in advance, I'm sure they probably would. [LB460]

AMY PRENDA: No, I think they would. [LB460]

SENATOR COUNCIL: But I don't want to penalize people who aren't in a position to notify in advance. [LB460]

AMY PRENDA: No, and I think you're absolutely right. Us testifying today is not because we think that what you're trying to do is bad public policy. All we want to do is to say please take into consideration some of these changes that you're making and the unintended consequences only because we're trying to immediately fix something. And those were just responses that I got back were that at least a three-day/three-day holds them a little bit more accountable. Five day on one end and five day on the other of the time the Sheriffs Association or, sorry, the sheriffs have five days now to report back to NSP, that leaves a large window where sex offenders could move around and we not know where they are. [LB460]

SENATOR COUNCIL: So in picking up where my colleague, Senator Harr, left off with the Attorney General, are you willing to...are the sheriffs willing to sit down and work with the Judiciary Committee in fashioning... [LB460]

AMY PRENDA: Yes, for sure. [LB460]

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SENATOR COUNCIL: ...a workable system here? [LB460]

AMY PRENDA: For sure. [LB460]

SENATOR COUNCIL: Thank you. [LB460]

SENATOR ASHFORD: Amy, thanks for your testimony and your offer to help. Colonel, I think you're the last testifier today as we have to go upstairs and do our other thing. Welcome and congratulations. [LB460]

DAVID SANKEY: (Exhibit 13) Thank you, sir. Chairman Ashford and members of the Judiciary Committee, my name is David Sankey, D-a-v-i-d S-a-n-k-e-y, and I serve as the superintendent of the Nebraska State Patrol. I'm here today to testify in a neutral capacity to provide information on the Sex Offender Registration Act and the impact to the State Patrol to possible implementation of AM873 and AM969 to LB460. One of the State Patrol's many responsibilities is to maintain the Sex Offender Registry as required by statute for the state of Nebraska. Currently there are approximately 3,500 persons on the registry with approximately 30 new persons added each month. AM873 would affect those persons who are currently on the Sex Offender Registry and designated a Level 1 offender as of December 31, 2009. Under this proposal, these persons will revert back to their previous registration length and requirements. This will affect 461 registrants as of March 22, 2011, and require the maintenance of two separate registries until at least 2018 and potentially longer. Those 461 were tiered under LB285 as follows: 144 as 15-year; 156 as 25-year; and 161 as lifetime--317 of these individuals have a felony conviction and/or committed an aggravated offense. When LB285 went into effect, 109 registrants were still in the process of having their risk assessed. Because of the new law, these assessments were not completed. If the Legislature moves forward with the changes in AM873, we respectfully request clarification on whether or not to complete such assessments and any other reevaluation of risk the Legislature may wish for the State Patrol to pursue. Such assessments or reevaluations would have a fiscal impact on the Patrol as we would need the temporary services of a psychologist and other staff. Similarly, if AM969 would become law, an assessment tool and psychologist position would be needed for the implementation as the state reinstates a risk assessment process. The previous risk assessment tool was developed over a two-year process as a collaborative effort between the State Patrol, Department of Corrections, and the law psychology program at the University of Nebraska. Historically the assessment of a registrant is a multimonth process including the collection of numerous documents from various locations and their subsequent review. We anticipate a fairly high rate of appeals involving the risk assessment instrument, its development, and the application as it takes several years for the appeals to make it through the court system. In the past, we have completed 150 appeals in a year utilizing the services of a psychologist and an agency attorney. A return to the risk-based community notification

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system would require reestablishing our financial relationship with a vendor for community notification requirements. The former contract was \$42,935 annually. The passage of statutory language which indicates Nebraska is not working towards federal Adam Walsh Act substantial compliance will eliminate the state's eligibility for certain federal grants which have been received since 2008 in the amounts of \$92,000; \$280,000; and one pending for \$142,000. These grants are used for statewide by law enforcement agencies for the enforcement, development, updating of registration software. In our initial of AM969, we have noticed several provisions where our agency would like to provide technical assistance to the committee should further discussions occur on AM969. Since the registry was implemented in 1997, our agency, along with local law enforcement partners, has earned an abundance of experience regarding the registration process and status verification. We're well versed on what has worked well in the past, what is working well now, and what the public expects to know. With the primary goal of public safety in mind, we would welcome the opportunity to provide input during any further consideration of AM969 or any subsequent study of this issue. While the Nebraska State Patrol currently has no position regarding the process being contemplated by the amendments, we do have an interest to ensure the Legislature understands the implementation and application proposals. I appreciate the opportunity to be here today and to provide the information regarding the Sex Offender Registry Act. The State Patrol continues to strive to provide for professionally reliable services to the citizens and those affected by the registry and the community notification system. I'd be happy to answer any questions you might have. [LB460]

SENATOR ASHFORD: I just have one, Colonel, and it was brought up earlier by other testifiers and other questions, the 461 individuals were categorized as Level 1 sex offenders, is that correct? [LB460]

DAVID SANKEY: Yes, sir. [LB460]

SENATOR ASHFORD: And I guess the follow along is that...and I agree with your comment that it was your process that was in place in 1997 and it evolved after 1997 was a thoughtful process and was not just thrown together over lunch. [LB460]

DAVID SANKEY: Correct. [LB460]

SENATOR ASHFORD: I mean it was...and I accept that testimony. What I take from that is that there are 461 at least, and I don't know how many Level 2 sex offenders are out there, but of the 461 and obviously the amendment only referred to the Level 1s so I appreciate that. But the 461 that were determined to be Level 1 sex offenders are not registered publicly at least under the prior law. Those individuals were assessed even though...and based on to some degree the offense but also the other factors that related to that particular individual. So there were tests given to that individual to determine risk. [LB460]

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DAVID SANKEY: Except for the 109 that we never tested, yes, sir. [LB460]

SENATOR ASHFORD: Right. But the ones that have been on, they were tested by a system, through a system that at least the State Patrol determined to be object...to be a system that was supportable, credible, and defensible essentially. [LB460]

DAVID SANKEY: Yeah, through our previous risk assessment instrument. [LB460]

SENATOR ASHFORD: Right. And I think that gets to one of the points maybe Senator Lathrop brought up and that is at some point we have to rely...we aren't experts in this field. And I certainly during the year, last five before we passed LB285 when I looked at this, what always kept coming back to me is the State Patrol is a credible organization. They have a credible system, a lot more information available to those individuals than to us as legislators and it seemed to work. So I think that's what causes us...gives us pause and to think about a two-tier registration system because what you were doing was credible in my view and did protect the public because that's what you do. Correct? Yeah. [LB460]

DAVID SANKEY: That's what we try to do, yes, sir. [LB460]

SENATOR ASHFORD: Anyway, thanks for your comments. That will close the hearing. We have to get upstairs unless...thank you all. And I will say this is a very thoughtful hearing. We appreciate the information. (See also Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17) [LB460]