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Judiciary Committee
January 19, 2012

[LB721 LB799 LB807 LB814 LB815]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 19, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB721, LB815, LB799, LB807, and LB814. 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: All right. Why don't we get started, everyone. Good afternoon. We have five bills today, starting with Senator Larson's bill, and there you go. And then redefining the term "police animal." Any takers? All right. Senator Fulton, Senator Cornett. Let's start with LB721. Okay, good afternoon. [LB721]

KEISHA PATENT: Okay. Good afternoon, Senator Ashford, members of the committee. My name is Keisha Patent; that's K-e-i-s-h-a P-a-t-e-n-t, and I'm introducing this bill for Senator Larson today. This bill is fairly straightforward. It changes the definition of a police animal to include a horse or a dog owned by a county, city, or village, in addition to the animals owned by the state for use by the State Patrol in the statutes, criminalizing obstruction of a police officer and also harassment of a police animal. Senator Larson decided to bring this bill on behalf of his constituents. Both Creighton and Atkinson each have a police dog on their police force, and O'Neill is also planning to add a canine unit as well. Many other cities and counties across the state have added animals to their police forces, including Bellevue, Blair, Fremont, Grand Island, Kearney, Lincoln, Norfolk, Papillion, and Omaha, and the counties of Saunders, Saline, Lancaster, Scotts Bluff, Douglas, Jefferson, Washington, Sarpy, Seward, Nance, Otoe, and Dodge, to name just a few. These police animals are used by cities and county sheriff departments, and they're serving the public just as the animals used by the State Patrol. These animals are very expensive to purchase and to adequately train. Initial training takes about six weeks for a detection dog and another seven weeks for a patrol dog, and many of these police dogs are dual-purpose dogs requiring both types of training. This increases the man-hours needed and the costs associated with these animals. Because of the significant investment being made in these animals, we should aid in protecting a police animal owned by a city, county, or village law enforcement agency. Many cities and counties use police dogs that have been trained and certified by the police dog service division of the State Patrol. There are no statewide standards for police dog training so there is some variation between the agencies, and previous bills have attempted to add in some language about training, either that they should be certified by the State Patrol or that they should at least meet the Police Standards Advisory Council recommendations, and Senator Larson is willing to consider adding in language relating to that if the committee would choose to do so. So that's all I have. If you have any questions. [LB721]

SENATOR ASHFORD: Okay. Do we have any questions for...on this introduction?

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Seeing none, thanks. [LB721]

KEISHA PATENT: Okay. Thank you. [LB721]

SENATOR ASHFORD: Mike. [LB721]

MIKE KELLEY: (Exhibit 1) Good afternoon, Mr. Chairman. My name is Mike Kelley, K-e-l-l-e-y. I am a registered lobbyist appearing here today on behalf of the Fraternal Order of Police, and I have a letter from President John Francavilla supporting LB721. I guess very briefly it's our position every dog should have his day. (Laugh) But realistically, law enforcement animals, I guess, I don't see any real rational reason to treat them differently. So we thank Senator Larson for bringing the bill and we support it. I'm here for any questions that you might have. [LB721]

SENATOR ASHFORD: I don't...yes, Senator Coash has one. [LB721]

SENATOR COASH: Thank you, Senator Ashford. I'll ask you, Mr. Kelley, since you've been around awhile. [LB721]

MIKE KELLEY: Way too long, but go ahead. (Laugh) [LB721]

SENATOR COASH: When this statute was originally written and State Patrol dogs were in there, was that just at a time when... [LB721]

MIKE KELLEY: You know, I don't...and I can't... [LB721]

SENATOR COASH: ...when counties didn't have dogs? [LB721]

MIKE KELLEY: Senator, I can't answer that. I think it was specifically...I don't think the use of these kind of animals was very widespread when they put this bill in, so the Patrol was the only one doing it. But since then it has turned into a tool for a law enforcement officer throughout the state, at least that's according to Mr. Francavilla's letter, so. [LB721]

SENATOR COASH: Thank you. [LB721]

MIKE KELLEY: Therefore the need for a bill and that's why we support it. [LB721]

SENATOR ASHFORD: Okay. Thanks, Mike. [LB721]

MIKE KELLEY: Thank you. [LB721]

SENATOR ASHFORD: Any other testifiers? Yes, sir. [LB721]

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DAVID PARTSCH: (Exhibit 2) Good afternoon, Mr. Chairman, Judiciary Committee. My name is David Partsch, P-a-r-t-s-c-h. I am the Otoe County Attorney in Nebraska City, and I appear both in my individual capacity, as well as a representative of the Nebraska County Attorneys Association, and we are in support of LB721. Just to keep this short and sweet, in my jurisdiction now we have three dogs that are owned by the Otoe County Sheriffs Office: Pablo, Kane, and Havoc; and the Nebraska City police department also owns another: Jordy. And currently those four dogs don't have the same kind of protection that the State Patrol's animals have. They're working extremely hard in Otoe County, especially on Highway 2, which I understand is the state's second most highest entry and exit point other than Interstate 80, at least when we're not flooded. And these dogs ought to be treated the same as the State Patrol dogs; ought to have the same protection as all animals owned by the police enforcing the laws of our state. Thank you. [LB721]

SENATOR ASHFORD: Thanks, David. [LB721]

JACK CHELOHA: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Jack Cheloha; the last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I want to testify in support of LB721 on behalf of the city and the Omaha police department. Essentially, in Omaha right now, we have 14 police dogs that we currently have within the patrol. We utilize them for our drug enforcement purposes. At the Omaha Eppley Airport, we use them for security, as well as, you know, some of them have the capability of smelling for bombs and things along those lines. We also have eight horses in the command right now that we use for crowd control, if you will, traffic control, because they're easier to see, etcetera. We think this is a good bill. We appreciate Senator Larson bringing it. Some of the incidents that some of the police command related to me that happens to our animals sometimes is we have had horses hit with lit cigar butts or cigarettes where they've tried to jolt the rider. Obviously, in certain violent cases, you know, our police dogs have been beaten, abused, shot at, etcetera, so we think this is good legislation and it should be extended down to the political subdivision. Thank you. I'll try to answer any questions. [LB721]

SENATOR ASHFORD: I don't see any, Jack. Thanks. [LB721]

JACK CHELOHA: Thank you. [LB721]

SENATOR ASHFORD: Any other testifiers for or against? Seeing none, do you wish to close or do you want to waive closing? [LB721]

KEISHA PATENT: I'll waive closing. [LB721]

SENATOR ASHFORD: Okay. Let's go on to LB815. Senator Fulton. [LB721]

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SENATOR FULTON: Your timing is impeccable, Senator. [LB815]

SENATOR ASHFORD: Absolutely. [LB815]

SENATOR FULTON: Good afternoon, Mr. Chairman, members of the committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 in the Legislature. I introduce to you LB815, legislation that changes the penalty for concealing the death of another person and specifically criminalizes attempts to prevent the discovery of human remains. LB815 increases the penalty for concealing the death of another or an attempt to prevent the discovery of human remains to a Class III felony punishable by not less than one year and no more than 20 years in prison. Currently, an attempt to prevent discovery of human remains can be charged under concealing the death of another, a Class I misdemeanor. This bill further establishes the crime will be treated as a separate and distinct offense with any sentences imposed to be served consecutively. The concealment of a person's death or of the human remains often significantly hampers homicide investigations. This in turn greatly enhances the possibility the person responsible for the homicide will either go unpunished or receive a lesser punishment than otherwise would be legally appropriate. Under LB815, it would be one crime to kill and another to conceal. Hiding evidence shouldn't allow criminals to get off with an easier sentence. This bill provides another layer of accountability and appropriate penalties for concealing the death of another. Representatives from the Attorney General's Office and the Lancaster County Attorneys Office, I believe, are here to follow me to answer any specific questions you might have, or I would endeavor to respond to your queries should you have any. Thank you, Mr. Chairman. [LB815]

SENATOR ASHFORD: Any questions of Senator Fulton? Yes, Senator Council. [LB815]

SENATOR COUNCIL: Thank you, Senator Fulton. In just reading the summary, and admittedly I haven't read the entire bill, but the summary indicates that the intent of the amendment is to apply these offenses...to provide these changes to offenses committed prior to the effective date of the act. So, and if I'm not correct on that, then you or someone, but that's at least what the summary that the committee had been provided. And I guess I have some questions about that, that troubles me about that. [LB815]

SENATOR FULTON: Okay. Yeah, I don't have the summary in front of me. I can go to the bill, I guess. What is the...? [LB815]

SENATOR COUNCIL: Yeah. To offenses committed prior to the effective date of the act for which the statute of limitations has not expired. So since we don't have, currently have a statute that is what is attempting to prevent the discovery (inaudible). [LB815]

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SENATOR FULTON: I have the summary now if you want to... [LB815]

SENATOR COUNCIL: It says the current penalty for concealing the death of another person is a Class I misdemeanor; the current statute of limitations is 18 months. So under your bill, if the bill is enacted and the 18-month statute of limitation has not run on what would have been a Class I misdemeanor, the intent of this bill is to now make it a Class III felony? [LB815]

SENATOR FULTON: Correct. And additionally in the bill, see it's page 4 of the bill, concealing the death of another person would fall under the category of other crimes that for which there shall be no...there shall not be any time limitations. That's another part of the bill. That's on page 4. Does that answer your question? [LB815]

SENATOR COUNCIL: I understand that there will be no statute of limitations on it from here forward, but the implication here is for an offense that was committed before the potential enactment of your bill. If an offense that was committed at the time when it was a Class I misdemeanor, under your bill would make it a Class III felony, I think that has some retroactive issues associated with that. [LB815]

SENATOR FULTON: Okay. Yeah. [LB815]

SENATOR COUNCIL: I mean if at the time I committed the offense it was a Class I and the statute of limitations hasn't passed, and this bill is passed, now an offense at the time I was committed it was a Class I misdemeanor now is a Class III felony. [LB815]

SENATOR FULTON: Yeah. If that's something we can address during the drafting. So you're saying in the event that the statute of limitations runs out on something that would have previously been a Class I misdemeanor, which during...after the enactment of this bill would... [LB815]

SENATOR COUNCIL: Now would be a Class III felony. [LB815]

SENATOR FULTON: ...there going forward have been a Class III felony, then are we indeed opening the statute of limitations on someone who had been charged under a Class I misdemeanor. [LB815]

SENATOR COUNCIL: Yeah. And it's not so much opening the statute of limitations is you're retroactively applying an increased penalty for an offense that at the time it was committed...because, for example, the Class I misdemeanor statute of limitations is 18 months. If the bill passes, with or without an emergency clause, and at the time of the effective date there is somebody out there who is 16 months into an 18-month statute of limitations, under this bill they would now be subject to a Class III felony although at the time they committed the offense it was a Class I misdemeanor. [LB815]

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SENATOR FULTON: Yeah. Understood. [LB815]

SENATOR COUNCIL: Okay. Okay. [LB815]

SENATOR FULTON: There's some overlap. That's...and I... [LB815]

SENATOR COUNCIL: Okay. And maybe...I mean that's an issue too, because now you're talking about attempt to prevent the discovery of human remains, and it may run from the point at which you've determined that they were preventing...they were attempting to prevent. Kind of...I... [LB815]

SENATOR FULTON: I think that would be a way to answer this, and how the prosecutor chooses to move forward, if indeed that's something that is being pursued. [LB815]

SENATOR COUNCIL: Okay. [LB815]

SENATOR FULTON: You know, the time at which one attempted to conceal the death of another person, obviously, would have to be taken into consideration. So there's some judgment to be left there. But if you envision a way that we could rectify...this is...I did not intentionally bring this forward with, you know, trying to capture someone... [LB815]

SENATOR COUNCIL: Yeah, no. My only concern is the retroactive application of an increased penalty... [LB815]

SENATOR FULTON: Yeah, understood. [LB815]

SENATOR COUNCIL: ...and that's potentially what this provides for. And I think there are constitutional implications around that. Thank you. [LB815]

SENATOR FULTON: Okay. [LB815]

SENATOR ASHFORD: Thanks, Senator Fulton. No other questions? [LB815]

SENATOR LATHROP: You want us to ask you some questions? [LB815]

SENATOR HARR: No. [LB815]

SENATOR FULTON: No. [LB815]

SENATOR LATHROP: You look disappointed. (Laughter) [LB815]

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SENATOR HARR: I will reserve for Freudenberg. [LB815]

JOHN FREUDENBERG: Good afternoon. [LB815]

SENATOR ASHFORD: Good afternoon. [LB815]

JOHN FREUDENBERG: Mr. Chairperson and committee members, my name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief for the Nebraska Attorney General's Office. LB815 is part of the Attorney General's legislative package, and we appreciate Senator Fulton for allowing us to cooperate with him on it. The concealment of death significantly hampers homicide investigation and causes unnecessary pain and hardship to victims' families. In many instances, murders go unsolved and where people are held responsible to a lesser degree than they are fully accountable for. There are countless examples of such matters. Lucas Peterson in Seward County killed his infant child, hid her body in a rural location. Jeanne Fry concealed her husband's death in Madison County for months while his body decomposed in a trailer. Currently, eight states have similar felony provisions and four others have pending bills. It is our understanding that several other states will have similar proposals when their legislative session begins. This movement can be at least partially attributed to the case of the Anthony trial in Florida where Ms. Anthony concealed her daughter's death for several months by hiding her body. This case highlighted the problems that are caused by such concealment, which is a much wider problem than most people know. Leonard Rondeau is an example. He bludgeoned a man to death in Sheridan County and threw his body in a lake. The body condition had deteriorated significantly by the time it was found by some fishermen, to the point where the forensic evidence connecting him to his assailant was basically nonexistent. The murder of the Brazilian family in Omaha is another example. That family was concealed...or their murders were concealed. Currently, three of our office's murder cases involve concealment issues. Mr. O'Brien is handling the Stathis Kirkpatrick case in Red Willow County, where a man abducted, raped, and murdered a 14-year-old girl. He then took her to a rural cemetery where he lit her body on fire in an attempt to conceal her remains. In the other two matters, two people killed a man and hid his body in rural Kimball County; and the other matter, another person killed a woman and mutilated her body, and hid her in a rural ditch in Valley County. That body was not discovered for at least over a decade I believe it was. Also recently, in Sioux County, Salvador Lopez tortured and killed his stepdaughter--I believe she was middle-school age--because she was going to tell on him for sexually assaulting her for several years. After doing so, he hid her body in a rural ditch area and attempted to convince everyone that she had been abducted. LB815 amends Nebraska's existing death concealment penalty, which is only a Class I misdemeanor, to a Class III felony. The bill makes such concealment a separate and distinct offense from any other crime and removes the applicability of a statute of limitations. It would not make sense to reward those who do a really good job of hiding a body by allowing them to avoid criminal culpability. As we

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all knew, there is the original bad act and there's the cover-up. The cover-up is not being actively addressed in Nebraska. These are serious matters, for when they are done successfully, murder victims are being listed as missing persons, with their families left in a permanent state of emotional purgatory. I see I'm out of time so I'll try to answer any questions anybody has. [LB815]

SENATOR ASHFORD: Any questions of John? Senator Council. [LB815]

SENATOR COUNCIL: John, you heard my question to Senator Fulton... [LB815]

JOHN FREUDENBERG: I did. [LB815]

SENATOR COUNCIL: ...about the retroactive application. Now I can see how there wouldn't be a retroactivity issue if after this bill is enacted you prosecute someone for the homicide, and at the time you indict you also charge them with attempting to conceal, because you've discovered at that time that this person attempted to conceal. I guess what I'm trying to understand is that the retroactive nature of the bill as it's drafted go back to the actual homicide, or does it go back to when the state determines that a person either conceal or sought to prevent the discovery? [LB815]

JOHN FREUDENBERG: I guess there's a couple layers to that answer and I'll try to answer them as we go through. The concealment we're saying is a separate act. So the murder happens at time A, the concealment happens at time B. [LB815]

SENATOR COUNCIL: Right. [LB815]

JOHN FREUDENBERG: The statute of limitations would start on the act of concealment as a separate offense. [LB815]

SENATOR COUNCIL: Okay. [LB815]

JOHN FREUDENBERG: Now with regard to the retroactive nature of it, that only goes to the statute of limitations. So there will be no change in the status of this crime until the effective date of this act. And so if this amendment goes through, then at that point in time that's a substantive change, and only after that time can you be charged with a Class III felony. Before that time it will always be the 18-month Class I misdemeanor. Now the change the statute of limitations provision here does, that 18-month statute of limitations on a Class I misdemeanor would then never expire, so that would be something that would always exist. And that's the current state of the law the way the Supreme Court has interpreted the change in the statute of limitations in other matters, and that was actually something the Bill Drafters added to this bill, but I believe it is a correct statement of law. [LB815]

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SENATOR COUNCIL: Okay. So the amendment of an extension of the statute of limitations on an existing category of crime I understand, but to the extent the existing statute of limitation to now bootstrapping into another category of crime, you're saying that there's some Supreme Court precedent for (inaudible)? [LB815]

JOHN FREUDENBERG: No. I apologize, Your Honor--I mean, Senator--if I said that... [LB815]

SENATOR COUNCIL: I don't mind Your Honor. Go ahead. (Laughter) [LB815]

JOHN FREUDENBERG: Your Honor. You cannot be charged with a Class III felony until after the...unless your act occurred after the enactment of this statute. So just because the statute of limitations is being extended, that will apply to the Class I misdemeanor statute of limitations after the passage of this statute; then from that point forward it will apply to all the Class III felony charges that could be brought under here. [LB815]

SENATOR COUNCIL: All right. And I'll look at it further. I just wanted to make sure. Because clearly upon our competent staff's review of the bill, that it appeared to them as it did to me, that if you have committed this offense and the discovery of your commission of that offense occurred after the enactment of this statute but before the statute of limitations on the Class I misdemeanor expired, you would be charged under this statute. And that's problematic, so. [LB815]

JOHN FREUDENBERG: If it was determined that that is what the language says, I agree it needs to be changed. [LB815]

SENATOR COUNCIL: Okay. So we'll just make sure that the language doesn't say that. [LB815]

JOHN FREUDENBERG: Yes. [LB815]

SENATOR ASHFORD: Yes. Senator Harr. [LB815]

SENATOR HARR: Thank you, Senator Ashford. I guess following...I want to first follow up on what Senator Council asked, so let's draw up a hypothetical. Let's say hypothetically a girl was killed in Peru State College and the body hasn't been found, and it happened let's say a year ago. If that body were found tomorrow, if this bill were passed today and the body were found tomorrow, what would that person be charged with? [LB815]

JOHN FREUDENBERG: They would be charged with...if there was actually evidence of concealment...is that a...? [LB815]

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SENATOR HARR: Yes. [LB815]

JOHN FREUDENBERG: Then they would be charged with a Class I misdemeanor. [LB815]

SENATOR HARR: And if it occurred...if the body is found two years from now, what would that person be charged with? [LB815]

JOHN FREUDENBERG: Be charged with a Class I misdemeanor. [LB815]

SENATOR HARR: Okay. That's what I thought. I just wanted to make sure. And I guess I have some other questions about this underlying bill now. So as near as I can tell, this is largely brought...you said in a lot of other states bills are being brought this year. And last summer we received a lot of e-mails about Casey Anthony. And I'll be honest, I didn't follow Casey Anthony that closely so I don't know some of the underlying facts, but I do know what's going on in Nebraska. And I guess I'm still not convinced there's a need for this bill, and the reason I say that is because every example you have given, the person was charged with murder and, as near as I can tell, they've all been convicted of murder. So what is the purpose of this bill? [LB815]

JOHN FREUDENBERG: One of the big problems is, even if you catch a person, the Leonard Rondeau is a good example; it's the one from Sheridan County. That person ended up being convicted of manslaughter when that probably...well, it should have been a murder case, but the evidence tying the two people together was significantly diminished because of his concealment efforts. He threw the body in the water and everything that attached him to the body. Now what there was, was some circumstantial evidence to the point that brought...rose to the high-water mark enough to get to a plea bargain, but the physical evidence was destroyed because of his efforts. [LB815]

SENATOR HARR: Well, but it wasn't because it pled to a manslaughter. I mean, if there was enough evidence it would have gone forward and would (inaudible) been convicted by a jury. So I mean I see this as a tool to use but I'm not quite sure it's something that's necessary. Was there...and I don't know the facts of the case you're talking about. Was there proof that there was concealment? [LB815]

JOHN FREUDENBERG: There was proof that he threw him in the water after... [LB815]

SENATOR HARR: That what? [LB815]

JOHN FREUDENBERG: There was proof that he threw him in the water. [LB815]

SENATOR HARR: I can't understand you. [LB815]

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JOHN FREUDENBERG: I'm sorry. There was proof that he threw him in the lake. [LB815]

SENATOR HARR: So he threw him in the lake before or after he was dead? [LB815]

JOHN FREUDENBERG: After he was dead. [LB815]

SENATOR HARR: And how was that proof obtained? [LB815]

JOHN FREUDENBERG: That was through another person that was...saw that part of it occur. [LB815]

SENATOR HARR: Okay. And again I don't know the facts of that case, and maybe someone needs to sit down and explain it to me, because at this point I really don't see a need. I'll just...I'll say it at that. It seems like it's...it's a feel-good law and I get that, but it seems as though if the person did...if you have enough to prove they dumped the body, you probably have enough to prove that, at a minimum, they're an accessory after the fact and probably that they are responsible for this crime. So I'll leave that there. I'm...yeah...but I personally have a problem with two other issues, and number one is: tolling of the statute of limitation. Under common law, we...it was tolling of the statute of limitations was really limited to largely murder, treason, and I believe arson. We then added forgery. And then since 2004, it seems like just about every year, 2004, 2005, 2006, 2009, it looks like maybe 2010, we added new crimes that do not...the statute of limitations does not toll. And I would say the statute of limitations exists for a reason. There's a public policy reason for it and a common law reason for it; and that is, as time marches on people's memory become less clear, people die, people move, motives change. And so the reliability can become at times suspect. And so that's why in both criminal and civil cases we have a statute of limitation. What is the reason in this case for tolling the statute of limitation? [LB815]

JOHN FREUDENBERG: Well, the same thing that we talked about when you first started asking me those questions. If something happens but it is not discovered for three, four, or five years. Let's say we have a person who does a really good job of hiding the body, and we find the body three-and-a-half years from now. After normal felony prosecution...I mean normal felony statutory...the statute of limitations has expired, now they are outside the criminal culpability. So that they do a very, very good job of concealing the death of the body, now they've beat the system. And I don't think that is what society wants. I think they want people held accountable when they do things wrong. And to go to the other part of what you said previously, the need for the bill goes to society not favoring the concealment of these human remains and people using this as an attempt to get away from criminal culpability. So I think those two things go hand in hand. [LB815]

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SENATOR HARR: Well, let me address...you handled that in two parts. And I don't think the fact that someone does a good job of hiding the body, and the body is discovered, that still doesn't negate the problem of why we have the statute of limitation, which is memories change, memories fade, people leave, people die, and we need certainty within the law. It's...because you don't like the outcome, I mean, you could make the same argument for any law that just because you may have passed two years, one year, whatever the statute of limitation is, if we discover it later we should be able to go back and prosecute it. And that's not what public policy at this point is. We want certainty, we want a say, we want reliability in our prosecution. And I'm not sure that this rises to the level to be treated differently than other crimes, for instance, assault. We don't make an exception for assault. Maybe the victim waited, you know, three years to come forward. It doesn't mean the assault didn't occur but it took three years. And there are...you know, we could go through...I mean every statute we could go through and say, why, why do we let this person off, if you want. So I don't know if that answers that problem. [LB815]

JOHN FREUDENBERG: Well, another part of this is this is to address the situations where someone is able to avoid criminal culpability for the homicide. They'll be times if a body is discovered, they may be able to be connected to the hiding of the body. But that doesn't mean they will be necessarily connected to what caused that person to die in the first place. And that's a way that that situation is addressed. [LB815]

SENATOR HARR: But the fact is, the question is how are they connected? And if it's based on someone else's words, again you get back to the problem of memories fade, people move, people die. And it gets back to the certainty issue of why we have statute of limitations to begin with. Murder is horrendous. No one is going to deny that. But we have to charge murder for a reason. And if they didn't murder the person, why do we treat that person...? Then you're still an accessory, so why don't we toll the statute of limitations for all accessories to murder? [LB815]

JOHN FREUDENBERG: Well, this would be similar, akin to the DNA testing act. You find the body. You have the chance to find forensics from that body. Those aren't memories or anything. That's physical evidence. I mean, there's a reason why we don't have a statute of limitations on the DNA testing act, because there's information there that's reliable, that you can still use. So that is reason to go outside of the statute of limitations on something like this. [LB815]

SENATOR HARR: That is one situation, you're correct: where there's DNA. But this doesn't say there has to...maybe you say if there's DNA and the DNA is used to prosecute. But that's not necessarily what would happen in every case. [LB815]

JOHN FREUDENBERG: Well, it could be all kinds of forensics evidence though. I think

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you would agree with me on that. [LB815]

SENATOR HARR: Well, and there are a lot of forensic evidence in other types of criminal cases too. [LB815]

JOHN FREUDENBERG: Right. [LB815]

SENATOR HARR: And that doesn't mean we should toll the statute of limitation, and I'll leave it at that. I think we're going to agree to disagree on that. [LB815]

JOHN FREUDENBERG: Yes, sir. [LB815]

SENATOR HARR: And then my other issue is boxcarring the sentences, meaning consecutive. When do we use consecutive sentencing currently in the criminal statute? Where is it allowed, do you know? [LB815]

JOHN FREUDENBERG: It is allowed wherever the judge finds discretion to do so. [LB815]

SENATOR HARR: Well, but where is it required under statute? [LB815]

JOHN FREUDENBERG: Use of a firearm to commit a felony is the one that jumps off the top of my head. [LB815]

SENATOR HARR: Yeah, me too. And I think that's the only one I know of. And again, that's understandable and I understand why the public policy behind that. I'm just not sure if...if you're charging someone with murder, that's life, so why do we need to boxcar it? I don't see the reason for...I never understand why we...it seems to be, and I...we talked about this last year. It seems to be the policy of the Attorney General's Office to ask for consecutive sentencing. And I just...I haven't been convinced that most crimes warrant consecutive sentencing, and I'm not sure that again this one warrants it. It's no doubt when a murder occurs it's horrible and it's horrendous, but I'm just...well, I'm not committed to it. So maybe we can talk about it off the record. [LB815]

JOHN FREUDENBERG: Okay. [LB815]

SENATOR HARR: But at this time I would just tell you I would probably not be able to support those two parts of the bill: the consecutive, and the tolling of the statute of limitation. [LB815]

JOHN FREUDENBERG: Okay. Thank you, Senator. [LB815]

SENATOR ASHFORD: I'm sorry. I was just...go ahead, Senator Council. Excuse me.

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[LB815]

SENATOR COUNCIL: I'm sorry. And I'm sorry, John. The response to a question from Senator Harr, I guess, confused me more when he used the Peru State example, and said if the bill passed today what would the person be charged with a year from now and then what would that person be charged with two years from now. And did you say it would be a Class I misdemeanor? [LB815]

JOHN FREUDENBERG: It's based on the time of the offense. And since the example he gave happened in the past... [LB815]

SENATOR COUNCIL: Okay. [LB815]

JOHN FREUDENBERG: ...that's never going to change from being a Class I misdemeanor. [LB815]

SENATOR COUNCIL: Okay, okay. And that's gets to my question... [LB815]

SENATOR HARR: Yeah, and that's right. [LB815]

SENATOR COUNCIL: And that gets to my question on to be sure that that's...that there's no change of that to a Class III felony. Okay, I gotcha. [LB815]

SENATOR ASHFORD: Excuse me, John. I'm sorry, I had a diversion for a moment. [LB815]

SENATOR COUNCIL: Okay. Okay. [LB815]

SENATOR ASHFORD: Thanks, Senator Council. [LB815]

SENATOR COUNCIL: The statute of limitations then. [LB815]

SENATOR ASHFORD: I think that's...any other questions? Thanks, John. [LB815]

JOHN FREUDENBERG: Senator, I'd just like to point out that the representative from Lancaster County could not be here today, and County Attorney David Partsch... [LB815]

SENATOR ASHFORD: Dave is up again. [LB815]

JOHN FREUDENBERG: ...is going to pinch-hit for us. [LB815]

SENATOR ASHFORD: Okay, great. David. [LB815]

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DAVID PARTSCH: (Exhibits 3 and 4) Mr. Chairperson, committee, thank you. Again my name is David Partsch, P-a-r-t-s-c-h, Otoe County Attorney and also here on behalf of the Nebraska County Attorneys Association in support of LB815. You've already heard testimony from the Attorney General's Office with examples from different situations occurring throughout the state of Nebraska: Douglas County, Kimball County, Madison County, Nemaha, Seward, Sheridan, Sioux, Valley Counties have all had issues with this particular crime of concealment of the death of another where individuals are attempting to conceal deaths. The current maximum jail sentence is one year with no minimum. And this is a rather insignificant deterrent to someone also possibly facing serious felony charges for causing another person's death, and currently many are doing just about whatever they want to the victims' bodies in an attempt to try to hide their own acts. You know, we're hearing of bodies thrown in rivers, buried in fields, even cut into pieces, and not facing anything more than the 12 months possibly added on to what could be 40, 50, 80, or a life sentence. So it's...if one of the purposes of sentencing is deterrence, which I hope it is, there's really no significant deterrent effect of Section 28-1302 as it's currently drafted, and I think this bill LB815 would help fix this problem. I'd also like to add that not only does concealing the death of another hamper evidence collection but it also, in many instances, is a cause of a serious health concern as well. The cases often involve decomposing bodies or mutilated corpses. And the bill's proposed penalty provision, I think, certainly seems to better fit with the seriousness of the crime of concealing the death of another. And I guess in layman's terms we hear: let the punishment fit the crime, and I think that's what this bill does. Senator Harr, in order to address some of your issues I think with the statute of limitations and consecutive sentences, in this particular case concealing the death of another I would submit is different from most crimes, specifically because we're talking about the act of concealing the evidence. And so the purpose I think of not having a statute of limitations on this particular crime is to ensure that concealment does not allow the offender to get away with their crime. [LB815]

SENATOR ASHFORD: Just so I understand, but obviously someone who did not perpetrate the underlying homicide can be charged with this as well, of course. [LB815]

DAVID PARTSCH: Absolutely. [LB815]

SENATOR ASHFORD: So there's also that piece of it. They're separate. [LB815]

DAVID PARTSCH: Right. So yeah, there could be and there are instances where someone did not actually cause the death but they might be involved in helping someone else conceal a death. Or maybe the death was natural even. [LB815]

SENATOR ASHFORD: Right. [LB815]

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DAVID PARTSCH: Sometimes you have a natural death and they find the body, you know, in the bathtub a year later. [LB815]

SENATOR ASHFORD: Right. I mean and you could have a situation...and again I don't want to stretch this too far, but you could have a situation where there was a mercy killing of some kind, spouses where someone is terminally ill. You know, I've had personal knowledge of a couple of those cases, and where, you know...again, is a felony III, too severe a penalty for a case like that? You know, I don't know. That's a judgment call, but. [LB815]

DAVID PARTSCH: And one reason I think the felony III is appropriate is that it is a wide discretionary range: 1 to 20. [LB815]

SENATOR ASHFORD: Right. [LB815]

DAVID PARTSCH: So we could still have a one-year sentence on this particular crime if the judge thought that was appropriate. [LB815]

SENATOR ASHFORD: Right, right. Good. Okay, thanks, David. Senator Harr. [LB815]

SENATOR HARR: Well, let's start with you mentioned Seward County, and that's the Lucas case, Lucas Peterson. This law wouldn't apply to that situation, would it, if that were to occur tomorrow? [LB815]

DAVID PARTSCH: I'm not completely familiar with all the facts. Are you saying as a felony III, or...? [LB815]

SENATOR HARR: Well, you quoted the Seward case and I'm assuming that's Lucas Peterson. [LB815]

DAVID PARTSCH: Um-hum. [LB815]

SENATOR HARR: And Lucas Peterson, the transcript says, it was an agreement made between...the defendant was told it was an agreement between a county attorney and a sheriff that if you tell us where the body is, we'll waive all felonies. You would make this a felony. So in that situation the crime would actually be less, not greater, because at least they begin with a misdemeanor and he could do a year. If we make this a felony, they waived all felonies. So in that case this law would actually hinder and the guy would have done less time. [LB815]

DAVID PARTSCH: Well, I think it does...you raise a valid point that that would be a concern of the county attorney to ensure that if he's offering a particular agreement, he drafts it appropriately and doesn't waive a charge that may need to be filed. [LB815]

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SENATOR HARR: But in this situation. So you can't really use Seward, because Seward...actually under the current statute the guy got more time than he would have if this were a felony. (Laugh) [LB815]

DAVID PARTSCH: If the agreement, in fact, would have waived, it waived all felonies. [LB815]

SENATOR HARR: Well, that's what the Supreme Court ruled. [LB815]

DAVID PARTSCH: Yes. [LB815]

SENATOR HARR: You know, the Supreme Court ruled that was a waiver of all felonies, and that's why they got... [LB815]

DAVID PARTSCH: This would become a felony, that's correct. [LB815]

SENATOR HARR: And this would make it a felony. [LB815]

DAVID PARTSCH: You could still have other misdemeanor charges that may apply, such as false reporting or something of that nature. [LB815]

SENATOR HARR: Okay. And concealment of a body can be taken into account right now in a murder sentencing, correct? [LB815]

DAVID PARTSCH: The judge would have the discretion to craft an appropriate sentence based on the facts of the case. [LB815]

SENATOR HARR: As a matter of fact, that's one of the issues on death penalty is that you can look to, is that one of the mitigating factors is concealment of the body. [LB815]

DAVID PARTSCH: Aggravating factor. [LB815]

SENATOR HARR: Or...excuse me (laugh). Thank you...aggravating situations is concealment of the body. [LB815]

DAVID PARTSCH: I believe so. [LB815]

SENATOR HARR: Okay. [LB815]

DAVID PARTSCH: But not all of these cases involve death penalties, obviously. [LB815]

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SENATOR HARR: No. And I would agree with you there. And I guess my other issue...again, this is...I'm trying to work this through my small brain. And the argument is this will help with murder and that people maybe wouldn't conceal the crime. And I just have a problem with that argument in that, number one, most people try to conceal whatever crime they do--not just murder, but any. So why do we treat murder differently than any other crime that happens? And number two, I... [LB815]

DAVID PARTSCH: If I could adjust that? [LB815]

SENATOR HARR: Okay, yes. [LB815]

DAVID PARTSCH: Particularly in this type of case, we're talking about additional damage done to a victim's body that's going to affect not only the culpability of the defendant but also the effect that this crime has on the family. [LB815]

SENATOR HARR: There's an argument to be made for that, I agree with you there. But I also think any crime there's usually...that when you're concealing...trying to conceal a crime, you're probably trying to ruin the evidence. And then my other issue is, and this is probably the core of my issue, is I highly doubt that a person who commits a murder, which carries the maximum death penalty, is going to stop that action because they say: I'm facing 1 to 20. So I don't know if it's a proper deterrent. So if the purpose isn't deterrent, I don't think it...I think the underlying crime is so heinous that a 1 to 20 isn't going to make a difference. [LB815]

DAVID PARTSCH: I understand your thought process there completely, Senator. One reason that this is...this addresses kind of a consecutive sentence issue, as well, and I think John hit on it a little bit in that the real root of the problem with concealment of the death of another is that it often causes or results in a lack of evidence on causation of death. And so typically in the concealment cases where you have a very good act of concealment of a death of another, you may not be able to convict that person of a first-degree murder. And they're getting away with lesser sentences, all the way down to manslaughter, which also is 1 to 20. And so you may have a very heinous killing that should have been a first-degree murder or death penalty case that the evidence has been ruined and now the person is facing 1 to 20 on a manslaughter. And adding a possible 1 to 20 on the concealment, I think, at least brings it closer to the level of at least second-degree murder. There still may be a benefit to them of having concealed the death, but at least you're not stuck at 20. [LB815]

SENATOR HARR: That is a fair argument. Okay. Thank you very much. I appreciate it. [LB815]

DAVID PARTSCH: Thank you. [LB815]

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SENATOR ASHFORD: Thanks, David. Any other proponents? Any opponents? Neutral? Neutral. [LB815]

COLEEN NIELSEN: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. The Nebraska Criminal Defense Association has not yet met to take positions on their bills, so I am testifying in a neutral capacity. Generally, the Nebraska Criminal Defense Attorneys Association has not taken positions on penalty cases. They've felt that that's a public policy decision that should be made by the Legislature. But in recent years we've noticed that there has become a burden on the court system and on public defenders' offices as a result of enhanced penalties; and so if there were an objection to this or an opposition, it would be in that grain of thought. So in this particular case, particularly where it's a Class I misdemeanor to a Class III felony, we're going to add all kinds of litigation in this process. And so with that I'd be happy to answer any questions. [LB815]

SENATOR ASHFORD: Any questions of Coleen? Thanks, Coleen. Okay, that...anyone else? That concludes the hearing except for Senator Fulton if he would like to wind up for us here. [LB815]

SENATOR FULTON: Just to put this on the record and to close and be brief about it. I think you talked about it a little bit, Senator Harr, already, but just to point out that this additional crime to be added with this bill doesn't just apply to one who has committed murder. There could be others for whom it could be applied. Just to put that in the record and in the front of your mind. [LB815]

SENATOR ASHFORD: Thank you, Senator Fulton. [LB815]

SENATOR FULTON: Thank you. [LB815]

SENATOR ASHFORD: Thanks, Tony. Senator Cornett, LB799. Welcome. [LB815]

SENATOR CORNETT: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Senator Abbie Cornett, C-o-r-n-e-t-t. I represent the 45th Legislative District. I'm here today to introduce LB799, legislation that enhances the penalties for negligent child abuse. As the current law stands, a child abuse can be committed if a person either knowingly or negligently abuses a child. LB799 does not change that. Under LB799, negligent child abuse that does not result in death or serious bodily injury will continue to be a Class I misdemeanor. What LB799 does change is it makes negligent child abuse resulting in serious bodily injury a Class III felony. If the negligent child abuse results in the death of a child, it is a Class II felony under this bill. The distinction of intent determines whether the perpetrator is charged with a felony or misdemeanor. Currently, in Nebraska, if a person unintentionally kills another while in

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the commission of an unlawful act, he or she is guilty of manslaughter, a Class III felony. However, a person who negligently abuses a child has led to either serious bodily injury or death is only guilty of a misdemeanor; therefore, the killing of the child is a lesser offense than a similar killing of an adult. A misdemeanor is not an appropriate remedy when a person has caused the death of another, especially a child. The levels of culpability need to be established between the two existing options. This bill fills the gap and holds those who abuse children accountable. Representatives from the Attorney General's Office and the Hall County Attorney are here to answer your questions if you have any specifics. [LB799]

SENATOR ASHFORD: I don't think so. This harmonizes the... [LB799]

SENATOR CORNETT: That is the intent. Yes. [LB799]

SENATOR ASHFORD: Okay. Thanks, Abbie. [LB799]

SENATOR COUNCIL: It harmonizes the... [LB799]

SENATOR ASHFORD: Well, I was going to ask. The juvenile... [LB799]

SENATOR CORNETT: The juvenile. [LB799]

SENATOR ASHFORD: Or with the adult. [LB799]

SENATOR CORNETT: I know, Senator. (Laugh) For the record, it harmonizes the juvenile with the adult... [LB799]

SENATOR ASHFORD: And the adult. [LB799]

SENATOR CORNETT: Yes. [LB799]

SENATOR ASHFORD: All right. That was sort of a cerebral sort of thing. [LB799]

SENATOR HARR: Yes. [LB799]

SENATOR CORNETT: We've known one another long enough. (Laugh) [LB799]

SENATOR ASHFORD: Sorry. Long enough, it just sort of...it transmitted through the air somewhere. (Laughter) Thank you, Senator Cornett. John. [LB799]

JOHN FREUDENBERG: To be a little bit redundant, Mr. Chairperson and committee members, my name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief of the Nebraska Attorney General's Office. LB799 is also part of the Attorney

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General's legislative package, and we thank Senator Cornett for sponsoring it. There currently is a large gap in Nebraska's child abuse laws. This gap has resulted in inadequate options being available to courts, juries, and prosecutors. We currently have the crime of intentional child abuse resulting in death, which is a Class IB felony. As such, it is punishable by between 20 years and life. The next option below that offense in the criminal justice system to consider is negligent child abuse, which is a Class I misdemeanor punishable up to one year. However, when a person's abusive actions have resulted in the death or serious injury of a child, a Class I misdemeanor does not adequately address the matter. The system needs more options between those two now existing. There are offenses in which a child is seriously injured or killed which are more serious than a Class I misdemeanor but the actor's mental intent does not justify a Class IB felony. This bill provides prosecutors more options when making charging decisions, and courts and juries more options when deciding the correct level of a person's criminal culpability. The current system also has conflicting statutes. A person whose negligent abuse causes the death of a child can be convicted of negligent child abuse as a lesser-included offense during a trial. However, our law also states that a death caused in the course of the commission of an unlawful act, such as negligent child abuse, is manslaughter. The two offenses are not consistent with one another and cause hardship for courts charged with properly instructing juries on the law. Juries are then confused on how to properly proceed. Such confusion can easily frustrate justice. LB799 simply creates the offense of negligent child abuse resulting in death as a Class II felony, and child abuse resulting in a serious bodily injury as a Class III felony. It further clarifies that negligent child abuse should not apply in situations where a child has been killed or seriously injured. Right now, 13 other states have similar felony provisions. A recent example of where this confusion resulted in a questionable verdict is the Michael Wills matter in Lancaster County. Mr. Wills killed a 23-month-old child through blunt force trauma. The jury found that Mr. Wills should not be found guilty of intentional child abuse resulting in death, and convicted him of the lesser-included offense of negligent child abuse. The court properly did not tell the jury the significant difference in the punishment levels of the two crimes. If jurors would have known, they very well may have convicted of the higher offense. If such decision would have been based on that wide gap, that verdict would have been unjust. The punishment gap in contradictions of law need to be corrected. Thank you, and I'll try to answer any questions you may have. [LB799]

SENATOR ASHFORD: Yes. Senator Harr. [LB799]

SENATOR HARR: Thank you, Senator Lathrop...or Ashford. (Laughter) I know. All right, I have some questions for you. [LB799]

SENATOR ASHFORD: It works. [LB799]

SENATOR HARR: I don't know what's going on anymore. (Laughter) You gave an

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example of Lancaster, and you said the jury may have convicted. But you have no idea if they would have convicted differently if they knew what the sentence was. [LB799]

JOHN FREUDENBERG: That is correct. [LB799]

SENATOR HARR: Okay. And you say 13 states have similar laws. I guess will you be...can you provide to my office what those 13 states are and what those laws are that are similar? [LB799]

JOHN FREUDENBERG: We certainly will. [LB799]

SENATOR HARR: Okay. Thank you. So if I...I'm trying to figure out how this law works because I'm not quite sure what negligent child abuse is. So if I have a kid in my car, my child, and I don't have...it's a 3-year-old and she is not, or he, is not in a seat belt, and there is a car accident and the child dies, is that negligent child abuse? [LB799]

JOHN FREUDENBERG: That would be a decision for the jury. But yes, that would be something they could be brought probably up on the charges, and the jury would decide that. [LB799]

SENATOR HARR: Okay. So what would the jury instruction look like for a description of negligent child abuse? [LB799]

JOHN FREUDENBERG: Well, obviously it would go in and follow the statutory language, whatever it is. I'm trying to pull that out as we're speaking here. [LB799]

SENATOR HARR: Okay. [LB799]

JOHN FREUDENBERG: And I apologize, I'm not as quick at finding things as I once was. [LB799]

SENATOR HARR: Here is it on 3, starting on line 18, I think. [LB799]

JOHN FREUDENBERG: Of 3, line 18? "A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be..." and it sets forth the underlying five situations. And probably the one you're speaking of would be under (a), "Placed in a situation that endangers his or her life or physical or mental health." [LB799]

SENATOR HARR: Okay. So in that situation if the accident wasn't and in my hypothetical, my fault, I would still face a...and my child died, God forbid, knock on wood, would I face a Class II felony? [LB799]

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JOHN FREUDENBERG: Yes, you could. [LB799]

SENATOR HARR: Okay. And you feel that's adequate? [LB799]

JOHN FREUDENBERG: Adequate as...you mean, is it just? I think that is a situation where definitely the prosecutors would have to take a look at it and see what they felt was properly brought or not. [LB799]

SENATOR HARR: And you're a prosecutor. [LB799]

JOHN FREUDENBERG: Yes. [LB799]

SENATOR HARR: So I'm just asking, would you feel that's just? [LB799]

JOHN FREUDENBERG: Depending on the circumstances, in that case I don't think I would probably bring that case. [LB799]

SENATOR HARR: Okay. Thank you. And then...so my question is, if I negligently kill...now, let's say hypothetically, and I'm going to change the scenario of my hypothetical. I'm now driving...I'm still driving the car, but I hit another person. That person also dies. Again, knock on wood, my child dies, not properly seat-belted, and the other person drives...the other car...the person in the other car is also killed. That person would face...I would face Class II, possibly a Class II felony for the death of my child, and then...or of the child--let's not say mine. [LB799]

JOHN FREUDENBERG: Sure. [LB799]

SENATOR HARR: And then motor vehicle homicide for the other. Is that correct? [LB799]

JOHN FREUDENBERG: Or manslaughter for the other. [LB799]

SENATOR HARR: Or...oh yeah, manslaughter. So one would be 1 to 20 and the other would be 1 to 50. [LB799]

JOHN FREUDENBERG: That's correct. [LB799]

SENATOR HARR: And the public policy for the two different sentences...I mean, for the two different levels? [LB799]

JOHN FREUDENBERG: The duty we owe to the care of the children. [LB799]

SENATOR HARR: That's a fair answer. Okay, thank you very much. [LB799]

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SENATOR ASHFORD: Thanks, John. [LB799]

JOE FREUDENBERG: Thank you. [LB799]

SENATOR ASHFORD: Mark, welcome back. [LB799]

MARK YOUNG: Thank you. Good afternoon, Senator Ashford and members of the committee. My name is Mark Young, Y-o-u-n-g. I serve as the Hall County Attorney and am here in that capacity, as well as on behalf of the County Attorneys Association. LB799 does a good job of addressing one of the issues that has come up just in terms of policy. Right now, occasionally I'll be in a situation where I have to explain to a member of the public or a member of an extended family why negligently causing a child's death is the same level of crime as a second-offense shoplifting or lying to a police officer. It does not make sense. This issue has really come to the forefront because of some changes that started in the law back in about 2003, 2004, when the Nebraska Supreme Court made it clear that they considered negligent child abuse to be a lesser-included offense if you were doing a trial or somebody was charged with intentionally committing child abuse that resulted in death. That was expanded in a case that I was involved in, State v. Molina, where we got the actual intentional conviction but it was an issue in that case. And really, right now, juries are going to be instructed on negligent child abuse as a lesser-included any time you have one of these cases coming up. So this does a good job of addressing the huge penalty gap between intentionally causing the death and negligently causing the death. Where that penalty ought to be, I think, is a policy issue and one for you to decide and for me not to have much of an opinion on. But I'm in support of this bill. I do think, Senator, that not only could it be the kind of situation you're talking about, Senator Harr, where it's a traffic accident, there can be situations where you have horrific neglect, that a jury decides that that's not intentional, it's negligent. You know, you lock some child up and don't feed them for days or weeks at a time, and they die, or you refuse to give them medical care. Or you can have a horrific beating as was the case in the Molina case where the argument, the defense that was unsuccessful, but the defense was that this was, at best, a negligent beating that got out of hand, and that his intent was to negligently beat the child, not to beat the child to death over a period of 24 hours. Thank God for Nebraska juries. They didn't buy it. But I could see 12 people buying it in a slightly different set of facts, and that's why I'm in support of this bill. I'd be happy to answer any questions you might have. [LB799]

SENATOR ASHFORD: Yes, Senator Harr. [LB799]

SENATOR HARR: Thank you, Senator Ashford. And I understand the horrific beating. I mean if it is really a horrific beating I don't know how you'd ever get away with negligent. So I think...you know, a lot of this is case specific. I guess one question I have is, so

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what is the difference in sentencing between negligent child abuse resulting in serious bodily injury versus intentional child abuse leading to serious bodily injury? [LB799]

MARK YOUNG: I don't think there is one as it's currently drafted. [LB799]

SENATOR HARR: Under the statute there wouldn't be a difference? [LB799]

MARK YOUNG: Right. I don't see that, but I could be wrong, but. [LB799]

SENATOR HARR: Between negligent and intentional? [LB799]

MARK YOUNG: Right. [LB799]

SENATOR HARR: And the same child abuse committed negligently as a result...results in a child...death of the child, it would be the same for negligent and intentional? [LB799]

MARK YOUNG: No. Intentional under... [LB799]

SENATOR HARR: Minimum 25 years. [LB799]

MARK YOUNG: Yeah. [LB799]

SENATOR HARR: That's right. Okay. [LB799]

MARK YOUNG: And, Senator, if I may respond to your earlier comment about the horrific beating. Yeah, you would think, as we sit here today, that anybody is going to buy over that, but you could have a situation, and I suspect there have been some in this state where a jury has decided that the intent wasn't to kill the child but, because of the way the punishment was administered, accidentally the death was caused. So that it was cruel punishment but not intended to kill the child or not intended to be a severe beating. [LB799]

SENATOR HARR: And you said you've had to talk to some of your citizens, constituents, about situations that have occurred where there was negligent child abuse and it's only a Class I misdemeanor. What were some of those situations? [LB799]

MARK YOUNG: Actually one of those was a case that did not arise in my county but people approached me about it because it was pretty close in time to the Molina case. It was a case, I believe, in North Platte or that area, where the jury did find negligent child abuse. I think it was more of a neglect situation. And people were questioning me about how could that possibly be? You know, Molina, in that case, we got the significant sentence that guy deserved, and these people are walking on time served because they had done over a year. There have been other situations where it's part of preparation

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and consultation with victims' extended families where we've had death or serious injuries to children where I've had to tell them as part of explaining to them what the process is, what the options are going to be for the judge or jury, that one of the options may end up being a Class I misdemeanor. [LB799]

SENATOR HARR: But what were the underlying facts of those cases? [LB799]

MARK YOUNG: They were in one case a pretty significant set of injuries. I have right now a shaken baby case where I've talked to one of the parents about--the noncustodial parent, you know at the time--about the fact that this could end up being a Class I misdemeanor if the jury chooses to go down that road. Those are the type of situations. [LB799]

SENATOR HARR: So maybe shaken baby is the intent for this bill then? [LB799]

MARK YOUNG: That would be one of the scenarios. I mean the problem with this type of bill is we are addressing a number of...as child abuse statute does in general. You know, you can have the situation where the child is locked up and neglected, starves to death, or is denied proper medical care and dies. You could have a shaken baby. You could have a beating. [LB799]

SENATOR HARR: But if you starve a child. And I don't think anyone would argue that's negligent. [LB799]

MARK YOUNG: Yeah. People would and... [LB799]

SENATOR HARR: I mean, yes, a defense attorney would argue that; that's their job. But I can't imagine a rational person would say denying a child food over an extended period of time so long that it leads to death is negligent. I think that's intentional. [LB799]

MARK YOUNG: Well, I would agree, and if I am charging it, I'm going to trial on intentional, but it's being... [LB799]

SENATOR HARR: Well, and I think reasonable minds would agree on that. Yeah. [LB799]

MARK YOUNG: It's going to be instructed that one of the options is negligent, and a jury could come back...and I can think of a scenario, Senator, where if you have parents of limited intellectual abilities, perhaps limited funds, that a jury might feel sympathetic and think this is more they just didn't know how to properly care for this child rather than they were bad people and that they acted with intent. [LB799]

SENATOR HARR: I think you're pretty far out on a limb there. I mean, I...I think

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reasonable minds would understand the difference between negligence and intent. And while I agree there's a need to close this gap, I just...we made...this committee has made mistakes in the past where we cast a net too wide and we get people we don't intend to. And I just want to make sure that if we do pass a bill it's a good bill and it's focused on it, like a laser, on the problem in front of us and that we don't cast it too wide. And I guess going with that, I would feel more comfortable giving you judicial discretion to charge a situation like this than I would as we talked about earlier where we take your discretion away from you and require consecutive sentencing. So thank you very much. [LB799]

MARK YOUNG: Thank you. [LB799]

SENATOR ASHFORD: Thanks, Mark. [LB799]

MARK YOUNG: Thank you. [LB799]

SENATOR ASHFORD: Any other testifiers for the bill? Opposed? Neutral? Coleen is neutral here. They haven't met yet, but eventually they will meet and then we'll know. [LB799]

COLEEN NIELSEN: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. Senator Harr, I appreciate your comments on this, because again I'm testifying neutrally because we haven't taken an official position on the bills as of yet, and we meet tomorrow. But I did receive a comment in an e-mail with regard to this particular bill. And the concern was is that there is really no definition for criminal negligence in our statutes, and that may be problematic. And my understanding is, is that when...it's been the experience of this particular attorney that when this person was charged with a crime, that the only standard in NJI was civil negligence. So what would become problematic with this particular bill is, is that you've got Class III and Class II felonies with a negligence standard, with a civil negligence standard, and that negligence in Nebraska is an unintentional act. So we're...I'm just...we're just asking that as you review this bill, you take that into consideration. And the Criminal Defense Attorneys Association would be happy to work with the committee, with the senator, or with the AG's Office on some language in that regard. And with that, I'd be happy to answer any questions. [LB799]

SENATOR ASHFORD: Yes, Senator Coash. [LB799]

SENATOR COASH: Thank you, Chairman Ashford. Coleen, could you just repeat what you said about the absence of a definition of...it was a... [LB799]

COLEEN NIELSEN: There is no definition of criminal negligence in the statute. [LB799]

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SENATOR COASH: Criminal negligence. [LB799]

COLEEN NIELSEN: Right. [LB799]

SENATOR COASH: Okay. All right. Thank you. I just wanted to catch that. [LB799]

COLEEN NIELSEN: Sure. [LB799]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB799]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you, Coleen. Just briefly, so you're testifying in the neutral because your organization hasn't decided what to do about this yet? [LB799]

COLEEN NIELSEN: Right. [LB799]

SENATOR LAUTENBAUGH: They haven't met yet... [LB799]

COLEEN NIELSEN: That's correct. [LB799]

SENATOR LAUTENBAUGH: ...and gone through the process they go through. [LB799]

COLEEN NIELSEN: That's correct. [LB799]

SENATOR LAUTENBAUGH: And your organization is a voluntary membership. Is that correct? [LB799]

COLEEN NIELSEN: That's correct. [LB799]

SENATOR LAUTENBAUGH: That sounds nice. Okay, thank you. [LB799]

SENATOR ASHFORD: But they have to be members of that other organization before they...(laughter). [LB799]

SENATOR LAUTENBAUGH: I know. [LB799]

SENATOR LARSON: It's not voluntary. [LB799]

SENATOR ASHFORD: Which is not a volunteer organization. [LB799]

SENATOR LATHROP: That we covered yesterday. [LB799]

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SENATOR ASHFORD: Which we covered yesterday. Thanks, Coleen. [LB799]

COLEEN NIELSEN: Yes. [LB799]

SENATOR ASHFORD: Senator Cornett, do you wish to close? [LB799]

SENATOR CORNETT: Thank you, Senator Ashford and members of the committee. I would offer my support of my staff to work with you and myself on this issue. I do think it's important. There is sometimes when, as you all know I was a police officer for ten years, that we saw things that were negligent that led to the death of a child. I remember one specific case. The woman called 911 when she woke up and her blood alcohol was still well above a 2, and at some time during the night she had gotten up to take care of her baby and suffocated it by falling asleep on it. You know, her blood alcohol was very, very high at that time. That is negligent if you're taking care of a child. But some of the instances that Senator Harr was speaking with the Hall County Attorney, I don't know if that would be negligent or if that would be abuse, and I agree with Coleen that we may need to look at the negligence statute. But we'll be happy to offer our support in any way. [LB799]

SENATOR ASHFORD: Thank you, Senator Cornett. That concludes the hearing on...we now go to LB807. Senator Lautenbaugh, who is here voluntarily and... [LB799]

SENATOR LAUTENBAUGH: Yes. Thank you, Mr. Chairman and members of the committee. This is a very simple bill that addresses a problem that I think most of us weren't aware of until recently, and I don't think it's what we've intended as a committee. It deals with concealed carry. And if you have gun-related, prior gun-related offenses, you can be disqualified from getting a concealed carry permit. That has been interpreted because the statute or the existing law is not clear. It does not say conviction; it says you've committed an offense. I can speak from, well, semi-personal experience in that I had a client who this came up with. He was charged with a gun-related offense. The prosecutors agreed he should not have been charged with the offense, and he was not convicted. But the fact that that charge was made has disqualified him from renewing his concealed carry. And regardless of, you know, where we are philosophically on this committee, I don't think any of us would be comfortable with disqualifying people from a right that the rest of us would enjoy based upon a mere charge, not a conviction, and that's what this is meant to address. I don't own any guns; there are people coming behind me who do. I don't mean that as a threat, I mean they're going to be more informed than I am on this. But I'll be happy to answer any questions you might have. [LB807]

SENATOR ASHFORD: Yes. Senator Council. [LB807]

SENATOR COUNCIL: Thank you. And thank you, Senator Lautenbaugh, for explaining

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this, and I'm going to preface my comments. I've received about 20 e-mails on LB807, and almost every one of them states you need to support this because it is preventing law-abiding citizens from carrying concealed weapons. I've taken some exception because notwithstanding the example you've given, someone could have actually committed a violation of a gun law or a controlled substance law, and the prosecutor, for whatever reason, may have chosen not to prosecute or entered into some plea and they didn't plea to a gun charge; they pled to some other charge. So they don't have a conviction on those listed in the statute but that doesn't mean they didn't commit a gun-related offense or a controlled substance offense. [LB807]

SENATOR LAUTENBAUGH: That's true. [LB807]

SENATOR COUNCIL: Do you agree? [LB807]

SENATOR LAUTENBAUGH: That's true. [LB807]

SENATOR COUNCIL: Okay. Now I understand the intent of the bill that makes it clear that conviction, but it doesn't mean that law-abiding citizens are being deprived of their right to carry a concealed weapon under the current length--not all law-abiding citizens. [LB807]

SENATOR LAUTENBAUGH: Right. [LB807]

SENATOR COUNCIL: Okay. Thank you. I just needed...that needed to be clarified because that's the nature of the e-mails that I'm getting. And my position is if you committed an offense, a gun-related offense, why should I give you the privilege of carrying a concealed weapon? [LB807]

SENATOR LAUTENBAUGH: Well, we can argue whether that's a right or a privilege. But what I'm saying is I don't know how, after the fact, we can reliably go forward with just a charge. I mean I think it has to be reduced to a conviction. I understand you're saying some people may get away with something. But just the same, I could say there are people who could be wrongfully charged, and I can't justify taking away their, his or her right simply because the charge was made and withdrawn. That's not where we live. [LB807]

SENATOR COUNCIL: Okay. I appreciate it. But I just...there's this sense that under the current law, quote, law-abiding citizens are the ones who are being penalized. And that's not necessarily the case. [LB807]

SENATOR LAUTENBAUGH: It can be. It's not necessarily. I mean, there are people who are maybe getting away with something too. We can't do anything about that, but. [LB807]

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SENATOR COUNCIL: All right. [LB807]

SENATOR ASHFORD: Senator Harr. [LB807]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Senator Lautenbaugh, for bringing this bill. I took a CCW class last summer, and this is one of the complaints they had. My only...and I think we maybe need to clarify is I agree with this but we might want to put in language that says "or pending criminal," because the last thing...case...the last thing we would want is someone who has a pending case to apply and get the CCW and then be able to have it. Although I'm not as clear on this part of law as I need to be, so I don't know if there's actual prosecution, is it automatically...? And maybe that's my question to you as I talk out loud, is if you are convicted, do you automatically lose your license? [LB807]

SENATOR LAUTENBAUGH: The only circumstance I have encountered it in is renewals or first-time applications. I don't know for sure if the conviction is somehow transmitted and you're notified that you've lost your right. I don't know if that transpires, if that's what you're asking. [LB807]

SENATOR HARR: Okay. Well, I'll follow up on that. [LB807]

SENATOR LAUTENBAUGH: I'm confident there will be someone behind me who knows the answer to that. I just plain don't know. [LB807]

SENATOR HARR: Yeah. Thanks. [LB807]

SENATOR LAUTENBAUGH: I apologize. [LB807]

SENATOR ASHFORD: Thanks, Scott. Colonel. [LB807]

DAVID SANKEY: (Exhibit 5) Good afternoon. Chairman Ashford and members of the Judiciary Committee, my name is Colonel David Sankey, D-a-v-i-d S-a-n-k-e-y. I serve as the superintendent of the Nebraska State Patrol and I am here today to testify in favor of LB807 regarding eligibility requirements for applicants seeking a concealed handgun permit. I would like to express our appreciation to Senator Lautenbaugh for sponsoring this bill on our behalf. In 2006, the Legislature passed the Concealed Handgun Permit Act and provided the permit shall be issued by the Nebraska State Patrol if the applicant has met all the requirements. Among those requirements listed in 69-2433(4) and (5) are the mandates that the applicant has not been convicted of a felony or a crime of violence, and a separate mandate in (8) that an applicant does not have a violation of any law relating to firearms, unlawful use of weapons, or controlled substances. These provisions remain largely the same today. The use of the term

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"violation" as opposed to "conviction" in (8) has led to difficult determinations for both the applicants and the agency. Absence of a conviction can happen for a long list of reasons, from innocence to procedural issues. We as an agency are forced to review police reports, arrest reports, court records, and the applicant testimony to make a determination if a violation occurred. This can in turn lead to administrative hearings and litigation. Currently, there is one case pending on appeal to Lancaster County District Court, it's Knight v. State Patrol, and we believe that that case is on hold pending further guidance from the Legislature. Because we believe it is prudent to continue to consider activities involving firearms and controlled substances, which are not covered under the felony prohibitor as prescribed in (4), the State Patrol simply requests that you change the word "violation" to "conviction" in 69-2433(8). A conviction is supported by a judicial determination with a full range of procedural protections, timely firsthand evidence, and full consideration of possible defenses. We believe that standard would better serve and provide more certainty to both the applicants and the agency. Although this issue does not involve a large number of applicants, it is an important problem for those that it does affect. During 2011, 14 applicants out of 4,235 total applications were impacted by this confusing issue. Of those 14, five were disqualified because of drug violations during the past ten years which did not result in a conviction. The other nine applicants had weapons violations in the past ten years which did not result in a conviction. I appreciate the opportunity to be here today and encourage you to advance LB807 to General File. The State Patrol continues to strive to provide professional and reliable services to the citizens seeking concealed handgun permits. I'd be happy to answer any questions you might have. [LB807]

SENATOR LATHROP: Thanks, Colonel. Any questions? Senator Harr. [LB807]

SENATOR HARR: Sorry. Just to clarify the earlier. So if a person is later convicted, they automatically lose their license? [LB807]

DAVID SANKEY: No. There's a process where the county attorney would have to make an appeal to have that license revoked. [LB807]

SENATOR HARR: Okay. [LB807]

DAVID SANKEY: So we don't have that ability. [LB807]

SENATOR HARR: Okay. Thank you. [LB807]

DAVID SANKEY: You bet. [LB807]

SENATOR LATHROP: But there is a process in place to do that. [LB807]

DAVID SANKEY: There is a process. Yes, sir. [LB807]

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SENATOR LATHROP: Okay. Very good. Thanks, Colonel. [LB807]

DAVID SANKEY: Thank you. [LB807]

SENATOR LATHROP: Dan. [LB807]

DANIEL CAREY: I would say thank you to Senator Ashford, but he's not with us right now, but members of the committee. [LB807]

SENATOR LATHROP: Is this your first time here? [LB807]

DANIEL CAREY: It is. Yeah. [LB807]

SENATOR LATHROP: All right. Well, welcome to the Judiciary Committee. [LB807]

DANIEL CAREY: (Exhibit 6) Happy to be here. Appreciate you all having me. My name is Daniel Carey. I'm a registered lobbyist representing the National Rifle Association here today to speak on behalf of LB807, which as the other two speakers before me have already said, this is a simple clarification of the language as it currently stands for disqualifiers on concealed carry permits. LB807 would make a clear distinction and preclude only those persons convicted in a court of law from obtaining their concealed carry permits, as opposed to those who have merely been charged with violations but never having been convicted. While I'm here today I would like to actually make a suggestion, an amendment to this bill, and it's a one-word amendment, and the one word would be "criminal." I would like to add that on line 19 of page 3, between the words "a" and "conviction." And what we're looking to do with this addition of the word "criminal" would set an acceptable threshold for those convictions which we're truly wishing to preclude. For example, what we're looking at is in Title 163, Chapter 4, Section 1.02 of the state code pertaining to wildlife management and hunting. If you have to have a tube or three limit shells in your shotgun when it comes to pheasant or dove or quail hunting, but you wouldn't have to have that when it comes to certain geese seasons and individuals who could be out hunting geese and then go to their pheasant season could not have that tube or have more than three shells in their shotgun, and then would be held in violation and could potentially be convicted criminally, or convicted of having not had the correct amount of shells or had the tube in their shotgun. And we're not wanting to exclude these individuals from being able to go out and get their concealed carry permit and be held in the same light as individuals who would have been, you know, potentially armed robbery. Because at this point, a conviction is a conviction when it's held with firearms laws. So I would like to suggest that amendment to this bill. Other than that, we're in full support of it at the NRA and we appreciate your time and thank you very much for hearing me. If anybody has any questions. [LB807]

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SENATOR LATHROP: I do have a question for you. [LB807]

DANIEL CAREY: Sure. [LB807]

SENATOR LATHROP: If you are trying to make a distinction between a criminal conviction and something like having the plug out of your gun, isn't having the plug out of your gun a criminal violation? [LB807]

DANIEL CAREY: My understanding is it was a code violation. [LB807]

SENATOR LATHROP: In other words, is that an effective amendment to accomplish what you want? [LB807]

DANIEL CAREY: From our legal counsel and their standpoint, they thought that it would make a clear distinction. They thought that when you have a code violation, even though you were convicted of that code violation, that it would not be considered a criminal conviction. If you think there's better language that would better clarify it, I mean I'm open to suggestions. [LB807]

SENATOR LATHROP: But we'll look at it. [LB807]

DANIEL CAREY: Okay. [LB807]

SENATOR LATHROP: The distinction you're trying to make is a criminal conviction as opposed to some violation of, for example, hunting with the plug out of your gun. [LB807]

DANIEL CAREY: Sure. [LB807]

SENATOR LATHROP: Are there other examples of things that you would...? [LB807]

DANIEL CAREY: There's other violations such as city codes, where like in the city of Omaha or other places in Nebraska where you're not allowed to have a BB gun. And, you know, if you go out in your backyard shooting with your son, unaware--and not that ignorance is any...no acceptable means for not knowing the law. But shooting your BB gun, and the cops come because your neighbor complains on you, then you could be convicted of, you know, having a BB gun inside or discharging a BB gun inside city property. So those...examples like those, I mean smaller ones where it's not criminal in nature, where it's not violent in nature, where it's not the type of people that we're trying to preclude from obtaining their concealed carry permit are the infractions. And I'd be happy to supply you or the members of the committee with a list of infractions that we're trying to keep from being precluded from this group. [LB807]

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SENATOR LATHROP: Okay. That would be helpful, because I don't know if that amendment does what you want, but maybe it does. [LB807]

DANIEL CAREY: Sure. I'd be happy to. [LB807]

SENATOR LATHROP: Okay. Any other questions? I see none. Thanks. [LB807]

DANIEL CAREY: Okay, yeah. Thank you. Appreciate it. [LB807]

SENATOR LATHROP: You're up. [LB807]

ANDY ALLEN: Andy Allen; Omaha, Nebraska; president of the Nebraska Firearms Owners Association, and I'd also add the title, I'm also a lobbyist, so...registered lobbyist. First, we want to say we support this bill. The general idea, you know, common law, people would say, you know, as far as for legal purposes, if you have a violation of a law, there's a conviction. That's just the common reading of that. And beings there is instances where it's been questioned, we think it does need to be clarified, and our members are completely in support of that. I do have to point out, though, that my members have a couple of frustrations with things that hit into the same section of law. We have brought forward that there is a couple of places in here in these requirements where we are in violation of federal law, and we have brought that here, in hearings last year. We've spoken with several senators about that, and we have not seen anybody propose a bill to fix those violations of federal law, and my members are a little frustrated that we haven't taken action. Hopefully, maybe we can take a...draft an amendment that fixes those problems. But I don't know if it can, because you know how things work here in the Legislature better than I do. If we make a major change, do we have to whole another hearing, and that...so that's all I have. If anybody has any questions? [LB807]

SENATOR ASHFORD: I don't...yes, Senator Lautenbaugh. [LB807]

SENATOR LAUTENBAUGH: Briefly. I'd be interested...I know you have probably told me but I'm drawing a blank, so sometime later if you want to shoot me the things that are at issue we can certainly discuss it as a committee as well. [LB807]

ANDY ALLEN: They are actually real simple ones. You know, we did a correction, now it's three years ago, passed LB430, and in that we took in recognized service members for being able to get a concealed carry permit to bring our concealed carry permit in line with it's the Servicemembers Civil Relief Act of 2007. Just after we passed LB430, Congress, and it was signed off by the President, went and passed the Military Spouse Residency Relief Act, which says military spouses are supposed to get all the same rights that a military person does. And we have not corrected that situation. We also

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have the situation where it is a requirement in our statute that you be a U.S. citizen to be able to get a concealed carry permit. Many of you probably know, I brought a lawsuit in the city of Omaha because the city of Omaha had that as a requirement just to be able to own a concealable firearm. And their definition actually included a lot of rifles and shotguns of what a concealable firearm is. The federal courts have ruled that somebody that is a permanent resident alien of the United States has to be afforded all the rights and privileges of a citizen. Now we're not talking about, you know, somebody that's here illegally or just temporarily passing through the country because they're going to see Disneyland. We're talking people that are come to this country on a permanent status. They may be working to become a citizen. You know, that can take years to happen. There's also some people that for whatever reason decide, even though they're living here, maybe even have a spouse here that is a citizen, they decide to keep their citizenship back in the home country where they come from. There's a whole lot of reasons for that as well. But the federal courts have ruled that we have to recognize those people the same way we do citizens. And, right now, our statute doesn't do that. [LB807]

SENATOR ASHFORD: (See also Exhibit 8) Thanks, Allen. Any other proponents? Opponents? Neutral? Okay. Let's go to...Senator Schilz is up. Senator, LB814. Senator Schilz, welcome again for the... [LB807]

SENATOR SCHILZ: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Senator Ken Schilz, spelled K-e-n S-c-h-i-l-z. I represent the 47th Legislative District, and I'm here today to introduce LB814, legislation that imposes a statewide ban on the chemical compounds used to make the drugs commonly known as bath salts. And I think at this point, you know, the term bath salts is the street name for those types of drugs and that in no way are the bath salts that you actually use in your bathtub, which there has been some confusion on that. So I just wanted to get that on the record. LB814 amends the Uniform Controlled Substance Act to include the class of synthetic materials used to make these drugs. Under LB814, the penalty for possessing bath salts is a Class IV felony and the penalty for manufacturing or trafficking the bath salts is a Class III felony. According to the DEA, this drug causes people to lose motor control, have extreme paranoia and erratic violent behavior. In 2010, the American Association of Poison Control Centers reported 303 calls in relation to bath salts exposure. Last year, the number of similar calls jumped to an alarming 6,072. Currently, bath salts are banned in at least 38 states, and it's time for the Nebraska Legislature to outlaw these substances for the protection of our families and communities. And we have representatives from the Attorney General's Office and law enforcement that are here today, and they will be able to answer any specific questions you might have. Thank you very much. [LB814]

SENATOR ASHFORD: Thank you, Senator Schilz. Senator Coash. [LB814]

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SENATOR COASH: Thank you, Chairman Ashford. Senator Schilz, none of these substances are used for any other purpose than...? [LB814]

SENATOR SCHILZ: And as far as I know, they're not. I mean, they're basically designer drugs that have been manipulated so that they're changed just enough so that they don't fall under any other statutes, so...but others would be able to answer that better than me. [LB814]

SENATOR COASH: Okay. Do you want to...on page 3 of the bill, line 8, what is the name of that one? [LB814]

SENATOR SCHILZ: Excuse me? [LB814]

SENATOR COASH: Page 3. [LB814]

SENATOR SCHILZ: Um-hum. [LB814]

SENATOR COASH: Line 8. Can you pronounce that? [LB814]

SENATOR SCHILZ: (Laugh) Sure, given a little coaching, I can. We'll let you ask somebody else. [LB814]

SENATOR ASHFORD: Thank you, Senator Schilz. I mean this is very important stuff and I appreciate you going to the effort of getting this in there. [LB814]

SENATOR SCHILZ: No problem. I didn't realize that you guys were so much fun. [LB814]

SENATOR ASHFORD: We're not too bad. We like to have good flow of information and... [LB814]

SENATOR SCHILZ: (Laugh) Thank you very much. [LB814]

SENATOR ASHFORD: Thank you. Yes, sir. Come on up, Corey. [LB814]

COREY O'BRIEN: Thank you, Mr. Chairman. Mr. Chairman and senators of the Judiciary Committee, my name is Corey O'Brien. That's C-o-r-e-y O'B-r-i-e-n. I'm an Assistant Attorney General and section chief for the criminal prosecution division of the Nebraska Attorney General's Office. Today it's my privilege to appear on behalf of the Attorney General's Office, Attorney General Jon Bruning, as well as the Nebraska County Attorneys Association in expressing support for LB814. What LB814 is designed to do is to schedule substances that are called bath salts, to prohibit the possession, manufacture, and trafficking of these synthetically produced designer drugs. Let me be

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clear: These are not Epsom salts or Calgon or really any legitimate consumer product. In fact, bath salts which are marketed and sold under generic-sounding names such as Blue Wave, Red Dove, Vanilla Sky, and Molly's Plant Food, they exist solely for the purposes of getting children and young adults high, and in the process lining the pockets of clandestine manufacturers and entrepreneurs. These substances are extremely cheap to purchase. They're widely available over the Internet and a few local novelty stores, some tobacco and head shops, and we're even now starting to see some street-level dealing. In short, bath salts are a very powerful and scary stimulant that I've heard some compare to meth, some to ecstasy, some to LSD, and some to phencyclidine or PCP. Aside from their ability to give a quick, cheap high, one of the major draws of these substances appears to be the lack of appreciable withdrawal symptoms and addictive qualities. But on the negative side, some of the effects that they've been known to generate are agitation, paranoia, hallucinations, violent outbursts, heart palpitations, and suicidal ideation. In October 2010, the federal DEA issued a temporary one-year ban on three specific compounds most commonly associated with bath salts. This federal ban, however, does not change the need for Nebraska to pass LB814, as the federal ban is only temporary and is not as inclusive as our ban, and it further gives...the federal ban does not give Nebraska law enforcement and prosecutors the ability adequately to arrest and prosecute violators. That is why 38 states have already enacted similar laws, and at least five others are contemplating such legislation. When we drafted LB814, we tried to emulate the success of LB19 from last session, the K2 bill. We consulted with the state's leading chemists, one of which you'll hear from shortly, Christine Gabig, with the Douglas County Sheriff's Department. We wanted to make this bill as all-encompassing as possible so that the manufacturers couldn't tweak the formula just enough that they could skirt our ban, what they're already doing under the federal laws. So that's why we designed the bill the way we did. You'll hear that this is a problem in the state of Nebraska. I will be followed also by a sheriff's deputy from Seward County, Michael Vance. He'll talk to you about a situation in which he encountered an individual that was high on bath salts and posed a very serious risk to himself and others. We would ask you to support LB814 to quickly pass it past the committee so that it can be enacted into law. There is an emergency clause. I would also like to add just one other point. There are a couple of other additions at the end of the bill on Schedule IV and Schedule V at the request of the pharmacists. We put those in there largely to conform our bill with the federal schedules, which over the recent past has added or taken out those substances that are added or deleted. Thank you. [LB814]

SENATOR ASHFORD: And that's one of...that has nothing to do with this. [LB814]

COREY O'BRIEN: It is completely unrelated to the bath salts. [LB814]

SENATOR ASHFORD: And again we're...the committee each year has a new iteration of these synthetic drugs, and I suspect we'll continue to. I know what a good job

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Christine does in Douglas County identifying these substances, and we'll hear more from her. But we're sort of on an ongoing course here, aren't we, I mean? [LB814]

COREY O'BRIEN: I think we estimated that this was the third out of the last four years that we've been here on a synthetic stimulant that we were trying to outlaw. [LB814]

SENATOR ASHFORD: And maybe be here next year. It's just so incredibly tragic, and I...this is not a criticism of Corey, but the use of the word entrepreneur, I'd have to say maybe...(laugh). I know you were using it in a... [LB814]

COREY O'BRIEN: I was trying to be generous. [LB814]

SENATOR ASHFORD: And you were trying to define it and you were trying to be charitable. But anyway, thanks for your hard work on this issue. [LB814]

SENATOR COUNCIL: Just a quick couple of questions, Mr. O'Brien. [LB814]

COREY O'BRIEN: Yes, Senator. [LB814]

SENATOR COUNCIL You spoke about the temporary federal ban. Of the substances that appear in LB814, are those three...? [LB814]

COREY O'BRIEN: They're included. [LB814]

SENATOR COUNCIL: They're included. Now the carisoprodol... [LB814]

COREY O'BRIEN: Carisoprodol. [LB814]

SENATOR COUNCIL: Cari...yeah, that one. What's the...is that also a part of the bath salts? [LB814]

COREY O'BRIEN: That's not part of the bath salts. That's part of that federal tweak that the pharmacists asked us to include that was added to the federal schedules. [LB814]

SENATOR COUNCIL: Okay. Now regrettably, as evidenced by the fact that at least every year that I have been here we are adding some new substance because of the ability of bright individuals to come up with some new synthetic...and maybe the question is better asked for the chemists. I mean, is there any way for us to get ahead of these? I mean, it's always like, okay, they've now come up with this synthetic substance, is there any way to kind of get ahead of it? Because I can assure you that just as there's a new iPod or an iPad tomorrow, there's going to be new synthetics tomorrow. [LB814]

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COREY O'BRIEN: You know, I think people have been getting high since the beginning of time, and they've been finding various natural substances or synthetic substances. I'm afraid if we go too broad that we may end up with legislation that we won't really all like, so...because we don't want to ban, you know, certain gardening products that may actually be turned around and used for people to get high. So, you know, it's amazing to me how fast, like, the spread of this happened. I remember the first time I'd ever heard of bath salts, you guys were doing Final Reading when I got a phone call from Omaha saying, what's this bath salt stuff and is it included in the K2 prohibition? And my phone hasn't stopped ringing over the past year just telling me all these stories about the bath salts showing up. So it's alarming. [LB814]

SENATOR COUNCIL: Okay. Well, you know, I just...at the rate we're going, the schedule of controlled substances is going to be as long as War and Peace, I mean. And then trying to, you know, make sure that people are knowledgeable about what's on and what's off, I mean when you have 900 pages of...it's just going to be problematic. I mean I don't know how you get your hands around it, but I certainly appreciate the need, the concern. You know, I just don't know how we ever get ahead of the game on this. [LB814]

COREY O'BRIEN: I know when law enforcement calls me, and probably Christine as well, and says, is this so-and-so banned, it takes us about a half-hour to come back with an answer for them, so. [LB814]

SENATOR COUNCIL: Yeah. Right. [LB814]

COREY O'BRIEN: Thank you. [LB814]

SENATOR ASHFORD: Okay. Senator Coash. [LB814]

SENATOR COASH: Thanks, Chairman Ashford. Corey, I want to ask you about the penalty here. We're adding it as a Class IV felony. Is that about the same as the penalty for possession of methamphetamine, cocaine, or...? I'm just trying to figure out how bath salt and the possession of it compares to the possession of other drugs that we've outlawed. [LB814]

COREY O'BRIEN: The way that we've scheduled it here, it's listed as a Schedule I substance. Schedule I's, Schedule II's, and Schedule III's, they include substances such as PCP, LSD, heroine, methamphetamine, cocaine... [LB814]

SENATOR COASH: So possession of those drugs is also a Class IV felony? So we're... [LB814]

COREY O'BRIEN: Possession of those are all Class IV felonies. Correct. [LB814]

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SENATOR COASH: And manufacture... [LB814]

COREY O'BRIEN: Marijuana is the only exception. Simple possession of marijuana is an infraction. And that's... [LB814]

SENATOR COASH: Okay. [LB814]

COREY O'BRIEN: But that is scheduled as a Schedule I. [LB814]

SENATOR COASH: So we're not enhancing penalties? This isn't any different than any other drug as far as the crime. [LB814]

COREY O'BRIEN: No. And frankly, you know, we consider when we and the DEA look at these bath salts or whatever substance we're talking about, you know, where to put it; you consider what harm it poses to people and its effects on the central nervous system and things like that. And so all those things are taken into consideration here. We think that it's equivalent to PCP or ecstasy, which are our Class IV felonies, and that's why it has been scheduled as a Schedule I. [LB814]

SENATOR COASH: Okay. Thank you. [LB814]

SENATOR ASHFORD: Yes, Senator Harr. [LB814]

SENATOR HARR: Thanks, Senator Ashford. Did the County Attorneys Association already meet as a group? [LB814]

COREY O'BRIEN: They haven't, but we actually...we actually met pursuant to e-mail, had them review these, and then as a body they voted and they said that they would support this. [LB814]

SENATOR HARR: And it's a voluntary group? [LB814]

COREY O'BRIEN: Yes, as far as I know it's voluntary. I think there's one county that doesn't belong to the association, so. [LB814]

SENATOR HARR: And now is...anyway. But I guess my real question is, is I do not understand what any of these drugs are, I'll be quite honest, or their effects. Can you just lay a foundation for the record how you came about choosing the drugs that you did and...well, how you chose the drugs. [LB814]

COREY O'BRIEN: Well, my understanding is...well, first of all, you know me. I'm not smart enough to come up with this list on my own, so I enlisted... [LB814]

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SENATOR HARR: Neither am I. [LB814]

COREY O'BRIEN: I enlisted the assistance of master chemists like Christine Gabig, the Eastern Nebraska Forensic Laboratory, Celeste Laird from the Nebraska State Patrol. And I think that they...what they did in the past on the K2 and what they did in this regard is they kind of went out and seen what other states were encountering, what other variations or derivatives of the substances they've seen. They are on "listservs" and chats and blogs with other chemists from around the nation. And they said, hey, you've got a real opportunity here to be as all-inclusive as possible, and this is what you should consider, and this is what you should consider in terms of where the scientists are going to turn next to kind of tweak this and it will still be qualified as a stimulant form of the bath salts. [LB814]

SENATOR HARR: And I guess that's my next question: What criteria did they use to determine what is a stimulant, and what is just caffeine a stimulant, and what is a bath stimulant? [LB814]

COREY O'BRIEN: I must admit that I didn't cross-examine them that hard to actually acquire that answer for them, but certainly Christine will be here... [LB814]

SENATOR HARR: And I'm not trying to cross-examine them myself. I'm just trying to develop a record. [LB814]

COREY O'BRIEN: Christine will probably be a much better source of answering that question than I can be. [LB814]

SENATOR HARR: Okay. Thank you. [LB814]

SENATOR ASHFORD: Corey, and my comment would be, and it's not a question. You know, I...where we're studying...or Senator Council and I over the last couple years have been studying some of the root causes of violence in Douglas County, and doing...working with UNMC to try to parse through some of these emergency room incidents and the violent acts--and the results of that study are going to come out in the next month or so. But one of the things we are finding is that, you know, obviously gangs are involved a lot in some way, not necessarily directly, gang members are involved in these. But it's marijuana seems now to be the number one...am I? I think I'm correct not only from this study but from other conversations, that marijuana is the drug that is being sold on the street at a higher rate now than even meth, at least in Douglas County. And that may or may not...I mean, I...but...and that... [LB814]

COREY O'BRIEN: I would agree with that. I think it always has been, frankly. [LB814]

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SENATOR ASHFORD: I don't know if it always has been or not. [LB814]

COREY O'BRIEN: In the cultures that...in the criminality cultures that I've experienced. I mean, I was a prosecutor in Douglas County for ten years. [LB814]

SENATOR ASHFORD: Right. Right. [LB814]

COREY O'BRIEN: And even back...I was the head of the drug unit for a while. And, you know, there was so... [LB814]

SENATOR ASHFORD: I guess my point... [LB814]

COREY O'BRIEN: The prevalence of marijuana is just so staggering. [LB814]

SENATOR ASHFORD: It's staggering. And I...and it is seemingly part of these violent incidents, the homicides, the sale of or possession of or some sort of marijuana-related. It seems to be, not in every one of these cases, but it seems to be there a lot. The... [LB814]

COREY O'BRIEN: The jockeying for the market has always been a primary...I mean as long as I've been a prosecutor, as long as I lived in Omaha, jockeying for that cocaine market, jockeying for that methamphetamine market, and jockeying for that marijuana market was a root cause for a lot of the homicides. [LB814]

SENATOR ASHFORD: And I'm not demeaning the importance of this drug. This drug is not in the same...it's not a street drug in that sense. Correct? [LB814]

COREY O'BRIEN: No. This is more of a club drug more than a street-level drug. [LB814]

SENATOR ASHFORD: And it's purchased...its cost is...well now, I suppose...I mean, theoretically it can be sold...it's not on...it's not a scheduled drug, so. [LB814]

COREY O'BRIEN: It does fall in...I mean we're starting to see it get pulled out of the novelty stores and the tobacco shops and the head shops because of the federal ban though. So it is making its way to the street. I just read a case the other day about a traffic stop in which a huge quantity got pulled off the street. There was the...the Molly's Plant Food I mentioned, I got called from Sidney. They got a huge shipment being shipped through the mail out there. So it is starting to filter down again to the street level now. [LB814]

SENATOR ASHFORD: Well, I know Senator Larson had his computer out...his iPad out last year, and we were looking at the sales of the K2 on-line, and I'm sure this is

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somewhat similar. I'm not...the only point I'm making, I guess if I'm making one at all, is that as we...I mean, I'm seriously as we all are on this committee, seriously concerned about the violent juvenile violence in north Omaha, south Omaha, throughout Douglas County. It is something that is horrific. And the street drug, the marijuana, still is...even though we may...it's good that we're addressing this. We can't...we still have to deal with what is out there, and it's pretty...a pretty bad deal. [LB814]

COREY O'BRIEN: And we agree with that sentiment. And being a personal friend of Don Kleine's, I can tell you that it's a source of frustration for him as well, and the entire community, so...as prosecutors. [LB814]

SENATOR ASHFORD: Yeah, it just pours in there. And so thank you. [LB814]

COREY O'BRIEN: Thank you. [LB814]

SENATOR ASHFORD: Other proponents? Christine. [LB814]

CHRISTINE GABIG: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Christine Gabig, C-h-r-i-s-t-i-n-e G-a-b-i-g, and I'm a forensic scientist with the Douglas County Sheriff's Office up in Omaha. I'm here to testify in support of LB814. I worked with Senator Schilz's office and with Corey on this bill, and I think we have a really good bill here that's going to kind of keep us ahead of what people are starting to see. So bath salts are...have you guys heard of the drug called khat that's used? It's chewed over in Asia. Bath salts are just a chemical that's made specifically just to get around current drug laws. So they take this chemical, it's the same basis as cathinone which is the drug that's in khat, and they market it as bath salts or plant food or pond scum remover. It has no other use except to get around drug laws, and it acts with people about the same as like MDMA and cocaine and amphetamines. So the fact that they are considered, that they're legal, leaves people to consider that they might be safe. And so you have young people going out with easy access to these things all over the place and they think it's safe because it's legal, and they are ingesting these substances. And you're seeing problems across the world, actually, in the last, like, two years, a big increase with these bath salts. So I am a proponent of the way that this bill was written with the class approach, kind of like what we did with the synthetic cannabinoids where we're going to be able to get all of the, or hopefully, most of the variations of this drug that are out there. So any questions you would have I'd be happy to answer. I do have to say ethylmethylthiambutene...oh, he's not even here. (Laughter) [LB814]

SENATOR HARR: Good luck to the transcribers. [LB814]

SENATOR COUNCIL: Okay, repeat it again. Say it real fast again. [LB814]

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SENATOR ASHFORD: Christine, where do these...are these drugs manufactured? Do you know? I think are they manufactured... [LB814]

CHRISTINE GABIG: They're very easy to manufacture. More easy... [LB814]

SENATOR ASHFORD: And how do you do such a thing? [LB814]

CHRISTINE GABIG: Like if you look at what this bill here says, on page 13, we talk about 2-aminopropan-1-one, and then substitution of it, and that makes it simple. You have a structure like this and you add things on in one of the positions that are listed in the subsections. So you just start with a known. They extracted cathinone from the khat plant, and that's a drug that's been Schedule I for some time, so you have that chemical structure. And now all you have to do, it's really easy basic chemistry to remove some of these functional groups, we call them, or add things on to the ends to get around the drug laws, and then you'd still get high. There aren't as many of these substances as there are with the synthetic cannabinoids. There's maybe between 10 and 15 of them. [LB814]

SENATOR ASHFORD: How long does it take to manufacture a saleable quantity of...? [LB814]

CHRISTINE GABIG: I wouldn't know how long it takes, but it's easy chemistry. [LB814]

SENATOR ASHFORD Questions? Senator McGill. [LB814]

SENATOR MCGILL: Are you aware of any of the newest trends? Like it sounds like some bath salts are starting to be taken off the shelves. Are there any new drugs we should be considering also to tack onto this that are the newest, latest trend as bath salts go away? [LB814]

SENATOR HARR: Is that to outlaw or to...? [LB814]

SENATOR MCGILL: To outlaw. (Laugh) [LB814]

CHRISTINE GABIG: You know, I think that the fact that people are taking it off their shelves is just something that's happening as they're waiting to get in the new shipments, because most of what people are seeing already across the Midwest even...I know that once we start seeing it in Kansas City and I hear about it from my chemist friends there, we're going to start seeing it here in Nebraska within a couple months. And the things that they're seeing in Kansas City now don't contain any of the three chemicals that the DEA banned. So I think probably in Lincoln and Omaha they're pulling their stuff that contains the three chemicals the DEA banned but they're quickly going to get in the new supply that contains some of like some of these other

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cathinones that are not controlled. [LB814]

SENATOR MCGILL: So this covers those ones that Kansas City is seeing now. [LB814]

CHRISTINE GABIG: Correct. This would cover those. [LB814]

SENATOR MCGILL: That's good. Okay. [LB814]

SENATOR ASHFORD: This is a massive problem. Senator Harr. [LB814]

SENATOR HARR: Yes. My question is, is what I asked Mr. O'Brien earlier, is what criteria do you use to determine a stimulant is caffeine, gets you going in the morning, or is something worse that alters your mood that we as a body need to outlaw? [LB814]

CHRISTINE GABIG: That was a good question. When you heard...I wanted to try to remember to address that. You're not just identifying these things as, quote, unquote, a stimulant. You're actually identifying what the molecule is. Each of these things have names. So the way that this is worded you have subsections that talk about where things can be substituted on the basic molecule, and each one of those things has a name, like 4-methylmethcathinone, keto-N-methylbenzodioxolypropylamine, or methylenedioxy amphetamine. They're not caffeine. They are not related structurally at all to caffeine. All of these things together, these bath salts we keep calling them, but they're called synthetic cathinones, c-a-t-h-i-n-o-n-e-s, because they're based on this cathinone molecule which looks nothing like what I'm getting in my Starbucks in the morning. [LB814]

SENATOR HARR: You're way over my pay grade. But I guess my question is, how do we decide... [LB814]

SENATOR ASHFORD: Most everybody is above our pay grade, Senator. (Laughter) [LB814]

SENATOR HARR: Well... [LB814]

SENATOR LATHROP: Which is a different committee. [LB814]

CHRISTINE GABIG: Voluntary. [LB814]

SENATOR HARR: Yeah. My question...I guess my question is, how do I know that...or why should I believe this is a stimulant that we should outlaw as opposed to caffeine which we have determined is a safe, legal drug? Is there...is it because it raises heart rates? Is that why we...is that how we determine it or...? [LB814]

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CHRISTINE GABIG: Good question. And we're not just banning one stimulant here. We're banning a bunch of different classes of these stimulants. [LB814]

SENATOR HARR: Fair. Yeah, all of the...but why are we banning these stimulants, I should say? Yeah. [LB814]

CHRISTINE GABIG: Okay. Because all of these things that are spoken about in this bill are all related to cathinone. Cathinone is a Schedule I controlled substance that's a very dangerous controlled substance... [LB814]

SENATOR HARR: Ah. There we go. [LB814]

CHRISTINE GABIG: ...and they are all structurally related to that. [LB814]

SENATOR HARR: Now I understand. Okay. Thank you. [LB814]

CHRISTINE GABIG: Cool. [LB814]

SENATOR ASHFORD: We're just very fortunate that you're here. Now you moved here from Virginia? Where did you move from to come here? [LB814]

CHRISTINE GABIG: Well, I went to grad school out in Connecticut, but I'm originally from Lincoln, so. [LB814]

SENATOR ASHFORD: That's right. Well, I know we're very fortunate to have...and my conversations with you have been incredibly informative. So I'm glad you're back. [LB814]

CHRISTINE GABIG: I appreciate being invited. Thanks. [LB814]

SENATOR ASHFORD: Thank you. Okay. Any other testifiers...well, we have some more testifiers...I know the sheriff is here, and. Welcome, Sheriff. [LB814]

MIKE VANCE: Good afternoon, ladies and gentlemen. I'm Sergeant Mike Vance, last name is spelled V-a-n-c-e, from the Seward County Sheriff's Office. I've been in law enforcement just a little bit over 25 years. I've spent time as a narcotics investigator in Tennessee when I worked there, and I've dealt with a lot of different drugs and narcotics. Probably the quickest way to help you all make your decision on this would be to give you a real-life scenario of a recent arrest involving bath salts that we had in Seward County. I was given a call to respond to Staplehurst, Nebraska. A young man in his early twenties had abducted a 9-year-old boy from a city park. He kept the little boy in the vehicle with him for a little over an hour and made the little 9-year-old boy drive him around. He eventually drove back to his house. His parents saw their 9-year-old

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boy get out of the driver's side of the vehicle, and this young man in his early twenties get out of the passenger side and walked up to them and asked them if they had any blow--that he needed some blow, some cocaine. They told him to get off their property and they dialed 911. During the investigation, I spoke with the parents and I spoke with the young man, and obtained the information on who the young man in his early twenties was. We couldn't locate him for a while. I talked to the mother of the suspect, and she informed me that he was on bath salts and very violent, and that she did not want him back at her house until he had gotten help from somebody. And she informed me that if we promised her that we would try not to hurt him when we arrested him, that she would find out where he was at. Several hours later she called the sheriff's department and told us where he was hiding, and again reiterated that he was very violent when he was on these bath salts and that he had stolen everything of value out of her house and sold it to buy these bath salts. We located the young man approximately 30-40 minutes later, and he was on the roof of a house getting ready to jump off of the back of the house, on a roof. I talked him down. He went back into a window and came down the steps and out the front door. And when I told him I needed to talk to him about the young man that he had picked up in the park, he immediately tried to run. We grabbed him and a struggle ensued. Myself and two other deputies, both of which were 17, 18 years younger than me, fought with this young man for 3 or 4 or 5 minutes. He was "tased" three times, did not have any effect on him. I used knee strikes to his thigh, had no effect on him. By the time the three of us had finally gotten him restrained in handcuffs, we had nothing left physically. I mean we were at the end, at the point where we couldn't go any longer. One of the younger deputies stated after it was over that he never thought somebody that small could stand up with him and another deputy on his back, and that he never thought that he would get to the point where he didn't have enough strength to keep fighting. This young man and his mother recently exiting the courtroom shook my hand and thanked me for not killing him, and he's been in rehab, and both said this is a very...it changed his life. They said it's very dangerous, made him somebody that he was not. I've dealt many years ago with somebody on PCP, which was very similar to the reaction that this young man had. Didn't feel any pain, was able to actually stand up with two deputies, both over 200 pounds, on his back. And the only other drug that I've ever dealt with that was like that was PCP. Any questions? [LB814]

SENATOR ASHFORD: Thanks, Sergeant. Any questions? Well, thank you for what you did. And great job. [LB814]

MIKE VANCE: Thank you, Senator. [LB814]

SENATOR ASHFORD: Any other...anybody else? [LB814]

MARCIA MUETING: (Exhibit 7) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Marcia Muetting. I'm a pharmacist with the Nebraska

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Pharmacists Association. On behalf of the members of the Nebraska Pharmacists Association I offer support for LB814. Thank you to Senator Ken Schilz for allowing the NPA to add the bath salts legislation updates to the Nebraska Controlled Substances Act to mirror the federal Controlled Substances Act. LB814 accomplishes the following: It adds carisoprodol to Schedule V (sic--IV). This was just federally scheduled last week. It adds three other agents to Schedule V: lacosamide, pregabalin, ezogabine; and it also removes Pazo hemorrhoidal ointment from Schedule IV, as it's no longer being manufactured. I offered you a handout with a chart to give you a little bit of background of what these drugs do and what the intention is for the Nebraska Pharmacists Association with LB814. [LB814]

SENATOR ASHFORD: Thank you, Marcia. Any questions of Marcia? Seeing none, thanks. [LB814]

MARCIA MUETING: Sure. [LB814]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? That concludes the hearing and it concludes all the hearings. [LB814]