

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 28, 2011

[LB500 LB625 LB659 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 28, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Gubernatorial Appointments of Blake Dillon; William Reeg; Fred Stone to the Motor Vehicle Industry Licensing Board; LB659, LB625, and LB500. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; LeRoy Louden; and Scott Price. Senators absent: Scott Lautenbaugh.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee, my name is Deb Fischer and I am the Chair of the committee. I'm from District 43, Valentine, Nebraska. It's my pleasure to introduce to you the other committee members. On my far right is Senator Charlie Janssen from Fremont. Next we have Senator Kathy Campbell from Lincoln. On my immediate right is our committee counsel, Mr. Dustin Vaughan. On my immediate left is our committee clerk, Laurie Vollertsen. Next we have Senator Annette Dubas, she is from Fullerton, Nebraska. And on my far left is Senator LeRoy Louden who is from Ellsworth, Nebraska. Our pages this year are Crystal Scholl from Lincoln and Kyle Johnson from Sutton, Nebraska. They will be happy to distribute any materials that you may have that you would like to hand out to the committee. We will be hearing the bills in the order that they are listed on the agenda beginning with our Gubernatorial Appointments. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. I would ask that you please sign a yellow sign-in sheet at the on-deck table and have that ready to hand in to our committee clerk before you sit down please. We use a computerized transcription program and so it's very important that you follow the directions on that sign-in sheet. For the record, at the beginning of your testimony, please spell your last name and also your first name if it can be spelled several different ways. I would ask that you keep your testimony concise and try not to repeat what others have already covered. If you don't want to testify, but you do want to voice your support or opposition to a bill, you can indicate so at that on-deck table. There is a sheet provided there and that will be part of the official hearing. But if you do want to be listed on a committee statement, you need to come forward, actually sit in the chair and testify, state your name, state your position on a bill, that's the way you get on the committee statement that all senators and the public have access to. You may also submit written comments; we're happy to have those. They will be read into the official record. At this time I would ask that you turn off your cell phones, that means no texting. I'll ask for you to show me your hands...no, that's a joke, but, yeah, no texting, please, in the committee. We find it is courteous to be able to watch and listen to our testifiers. With that I will open our Gubernatorial Appointments. We have three today for the Motor Vehicle Licensing Board. And first is Mr. Blake Dillon. Would you come forward please. Good afternoon.

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BLAKE DILLON: Good afternoon. [CONFIRMATION]

SENATOR FISCHER: First up you get to figure this out. [CONFIRMATION]

BLAKE DILLON: Yes. [CONFIRMATION]

SENATOR FISCHER: There you go. [CONFIRMATION]

BLAKE DILLON: D-i-l-l-o-n, Blake, B-l-a-k-e. [CONFIRMATION]

SENATOR FISCHER: Okay. Thank you for coming in today. If you could just tell us a little bit about yourself and what you think you might be able to offer this board and why you'd be interested in the appointment please. [CONFIRMATION]

BLAKE DILLON: (Exhibit 1) Okay. I graduated from the University of Nebraska in 1991 and have been in Blair, Nebraska, at Sid Dillon Chevrolet as the dealer/operator since then. We have acquired other dealership in Lincoln; in 2000 Sid Dillon Buick in Lincoln. And in '02 we got into the motorcycle business which I think is how I'm appointed or how I'm set on the board as a motorcycle dealer. And in 2002 we acquired the Harley-Davidson store in Omaha, Nebraska. And in 2008 we acquired the Honda/Kawasaki/Suzuki dealership in Omaha as well. And when I say "we", it is my brother and I. And I think I would...I've had, obviously, plenty of experience and I think I would bring a perspective to the board from both the motorcycle side and the automotive side. [CONFIRMATION]

SENATOR FISCHER: Okay, thank you, Mr. Dillon. Are there any questions? Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Chairman Fischer. Mr. Dillon. [CONFIRMATION]

BLAKE DILLON: Yes. [CONFIRMATION]

SENATOR JANSSEN: What are your thoughts on front license plates?
[CONFIRMATION]

BLAKE DILLON: I would love to get rid of front license plates. They create a little bit of a hassle with vehicles we get from out of state. Certainly new vehicles we get from out of state on dealer trades come in with no front plate and would love to see that aspect...would love to see the front license plate law removed. [CONFIRMATION]

SENATOR JANSSEN: We see that every year. I just wanted to ask you that.
[CONFIRMATION]

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BLAKE DILLON: Yeah, yeah. [CONFIRMATION]

SENATOR JANSSEN: Obviously brought that up earlier that a family member of mine who bought a Corvette from Dillon Brothers. [CONFIRMATION]

BLAKE DILLON: Corvettes are a big issue because they really deter from the looks of the front end. [CONFIRMATION]

SENATOR JANSSEN: I believe the lobbyist in your industry also has a stake in that game, but... [CONFIRMATION]

BLAKE DILLON: Yes. [CONFIRMATION]

SENATOR JANSSEN: ...again I appreciate everything your family has done for Fremont and the Fremont area and it's great to see you on this board and maybe the Governor is starting to listen to me, or something, I know a couple of the members coming on this board. So thanks for being down here. [CONFIRMATION]

BLAKE DILLON: You bet. Thank you. [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Janssen. Other questions? Have you ever had any dealings with the board in the past? [CONFIRMATION]

BLAKE DILLON: Not really; I know Mr. Jackson just from whenever we would acquire a new store, all the paperwork and all documentation to get a license. So I've known Bill for 20 years. But other than that, my brother was on the board ahead of me so that's the only thing I really know about the board luckily. [CONFIRMATION]

SENATOR FISCHER: Thank you. And I appreciate your willingness to serve. [CONFIRMATION]

BLAKE DILLON: Yes, absolutely. [CONFIRMATION]

SENATOR FISCHER: Thank you very much. And thank you for driving in today. [CONFIRMATION]

BLAKE DILLON: Not a problem. [CONFIRMATION]

SENATOR FISCHER: Thanks. Is there anyone who would like to speak in favor of the appointment? You don't get to sit there anymore. [CONFIRMATION]

BLAKE DILLON: Oh, I don't? I can get up? [CONFIRMATION]

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SENATOR FISCHER: You love being first, don't you? [CONFIRMATION]

BLAKE DILLON: Thank you. [CONFIRMATION]

SENATOR FISCHER: Anyone wishing to speak in favor of the appointment? Anyone in opposition? Anyone in the neutral capacity? With that I will close the hearing on Mr. Dillon and open the hearing on William Reeg. Would you like to come forward please? Well you should be able to just follow this really easy now. [CONFIRMATION]

WILLIAM REEG: Yep. You did a good job. [CONFIRMATION]

SENATOR FISHER: Good afternoon and welcome. [CONFIRMATION]

WILLIAM REEG: (Exhibit 2) Good afternoon, Senator, and committee. Fellow senators, my name is Bill Reeg, R-e-e-g. I'm from Wayne, Nebraska. I was born and raised there. I'm a proud graduate of Wayne State College. We've had a Ford dealership since 1930...for 32 years, since 1978. One thing I take great pride in is I have a customer base, and in some cases I've sold three generations of families cars. And another great source of pride is I have three bulletin boards in my dealership with thank-you notes from my customers who sent them in terms of outstanding sales and/or service. I'm interested in this position because if confirmed by you it would give me an opportunity to affect the public perception of our industry. I'm very proud of our industry, very proud of my profession, and I think, perhaps, I could help affect a positive light on it. I'm humbled by the Governor's confidence in me. And I thank each of you for the service you give to our...your districts and our state. [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Reeg. Are there any questions? Senator Campbell. [CONFIRMATION]

SENATOR CAMPBELL: Thank you, Senator Fischer. Do you serve on the State Chamber Board? [CONFIRMATION]

WILLIAM REEG: On the State Chamber Board? [CONFIRMATION]

SENATOR CAMPBELL: You listed Mr. Kennedy as one of your references. I just wanted to know if you served on the board. [CONFIRMATION]

WILLIAM REEG: No, I do not. [CONFIRMATION]

SENATOR CAMPBELL: Okay, and in spite of the fact that you listed Mr. Todd; (laughter) that's an inside joke, sir, you're just fine. I couldn't resist with Loy Todd sitting in the audience. Thank you, Senator Fischer. [CONFIRMATION]

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SENATOR FISCHER: Thank you, Senator Campbell. Senator Janssen.
[CONFIRMATION]

SENATOR JANSSEN: Thank you, Chairman Fischer. Mr. Reeg, I guess I'll give you the same questions, because I always like to ask the dealers this. What do you think about the front license plates? [CONFIRMATION]

WILLIAM REEG: I would concur with Blake on that one. [CONFIRMATION]

SENATOR JANSSEN: So we do have Ford and Chevy on the same board here now.
[CONFIRMATION]

WILLIAM REEG: Yeah, we do. No, we do; I hope we can make some headway in that regard some (inaudible). [CONFIRMATION]

SENATOR JANSSEN: We'll get...I'm happy that you introduced yourself. I'm familiar with your family and having gone to Wayne, so. And I know Arnie's is also a pillar of the community up there as well. [CONFIRMATION]

WILLIAM REEG: Thank you. [CONFIRMATION]

SENATOR JANSSEN: So thank you for being willing to serve. [CONFIRMATION]

WILLIAM REEG: Thanks a lot. [CONFIRMATION]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Hadley.
[CONFIRMATION]

SENATOR HADLEY: Thank you. Mr. Reeg, I was just going to follow up and say, sitting next to Mr. Todd probably doesn't do anything for your chance (inaudible). (Laughter)
[CONFIRMATION]

WILLIAM REEG: I'll leave him home next time. [CONFIRMATION]

SENATOR FISCHER: Other questions? When you and I visited earlier, I believe the infamous Mr. Todd said that you were a former president of his association and I'd...I guess I'd like you to maybe tell us a little bit about your experiences when, as chairman of the New Car and Truck Dealers and if you felt it was a beneficial experience.
[CONFIRMATION]

WILLIAM REEG: Absolutely, I'm very proud of our state organization. We have just the best staff, best group of dealers, and I think the highlight of my tenure there probably was when we would visit Washington D.C. and go visit our senators and our

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representatives and it was just...it was just an overwhelming experience. And I found...I think I am probably a better car dealer just because of it. You know, so, but as I told you, actually Loy makes us look pretty good. He does most of the work. But we do...we are a very close fraternity. I mean, we're...I have great passion for our association and for my work. I just love getting up and going to work in the morning. [CONFIRMATION]

SENATOR FISCHER: That's great. Thank you for your service to your community and to the state and we certainly appreciate you putting your name forward for this position. [CONFIRMATION]

WILLIAM REEG: Thanks so much. [CONFIRMATION]

SENATOR FISCHER: Thank you very much. [CONFIRMATION]

WILLIAM REEG: Thank you. [CONFIRMATION]

SENATOR FISCHER: Is there anyone wishing to speak in favor of the nomination? Anyone in opposition? Anyone in a neutral capacity? I see none. With that I will close the hearing on Mr. Reeg and open the hearing for Mr. Fred Stone. [CONFIRMATION]

FRED STONE: Do you get this? [CONFIRMATION]

SENATOR FISCHER: Yes. Good afternoon and welcome. [CONFIRMATION]

FRED STONE: (Exhibit 3) Thank you. Senator Fischer, members of the committee, my name is Fred, F-r-e-d, Stone, S-t-o-n-e. There's no "flint." I've been on the board for three years and I really appreciate the work that they do. Not only in protecting the consumer, but I see it as a board that also makes sure that there's a level playing field within the industry. And I'm looking forward to another three years with your permission. And that's all I have to say. [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Stone. Since you're a current member on the board, could you tell the committee a little bit about what you do, maybe a controversial issue that comes up or (inaudible). [CONFIRMATION]

FRED STONE: After doughnuts? [CONFIRMATION]

SENATOR FISCHER: After doughnuts. And...or just the day-to-day operations of the board. [CONFIRMATION]

FRED STONE: We meet and really decide on the recommendations of the staff related to maybe potential fines and penalties for advertising violations, sales violations, things like that. Our recommendations generally have been taken at that level and then

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decided. There is the opportunity for the people who have been assessed the fines, take that a step further, but I think the work of the staff and then with the conversation of the board I think they come to a good resolution of just about all of the problems that arise. [CONFIRMATION]

SENATOR FISCHER: I know just as a consumer, as a citizen, I really don't hear very much about any types of conflicts or frauds within your industry and I would credit your association and also this licensing board with that, am I correct in that? [CONFIRMATION]

FRED STONE: I think you're right on target, yeah. I think the problems are solved, nipped in the bud, so to speak, before they reach any sort of explosion type of thing. So, no, it's very well handled. [CONFIRMATION]

SENATOR FISCHER: Thank you. Other questions? Senator Campbell. [CONFIRMATION]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Stone, thank you very much for your service. You've not only been on this board, but several other state boards serving the state and so for all the candidates we appreciate your time away from your businesses. In your application, you listed occupation software sales. Is that correct? [CONFIRMATION]

FRED STONE: That's correct. That's pretty broad, isn't it? [CONFIRMATION]

SENATOR CAMPBELL: It is. [CONFIRMATION]

FRED STONE: Yes. It's an interesting job. I basically office out of my home; my sales office is located in Florida; but the headquarters office is located in Wisconsin. So I get to travel to Madison occasionally. That's facetiously. And what the software is, basically, call center handling large volumes of incoming telephone calls. For instance we have an automated system in the state of Michigan that handles unemployment compensation. They'll get up to 50,000 calls a day in some cases handling unemployment claims and that sort of thing. So, generally that's what it is. It's a call-center type software. [CONFIRMATION]

SENATOR CAMPBELL: I bet you bring an interesting perspective to the board then? [CONFIRMATION]

FRED STONE: Well I try to every day, yeah, every time we meet. [CONFIRMATION]

SENATOR CAMPBELL: And I mean that seriously. [CONFIRMATION]

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FRED STONE: Well thank you, thank you. I appreciate that. [CONFIRMATION]

SENATOR CAMPBELL: I think that would be very helpful as they look at the scope. [CONFIRMATION]

FRED STONE: Yeah. Thank you. [CONFIRMATION]

SENATOR CAMPBELL: Thank you for serving. [CONFIRMATION]

FRED STONE: Um-hum. [CONFIRMATION]

SENATOR FISCHER: Thank you, Senator Campbell. Other questions? I see none. Thank you very much for serving. [CONFIRMATION]

FRED STONE: Thank you. Okay. [CONFIRMATION]

SENATOR FISCHER: Is there anyone wishing to speak in favor of this nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. With that I will close the hearing on the Gubernatorial Appointments for today. And I would once again like to thank you gentlemen for coming in. We really appreciate it. We will open the hearing on LB659 and Senator Karpisek, welcome. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Fischer, members of the Transportation Committee. For the record my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k and I represent the 32nd Legislative District. I'm here today to introduce LB659 which proposes to amend Section 60-6,196 making it unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of certain controlled substances found in body fluids. LB659 would also provide an absolute affirmative defense for certain controlled substances if consumed pursuant to and in accordance with specific healthcare guidelines. While all 50 states and the District of Columbia have laws that target impaired drivers, each of them have laws making it illegal to drive while under the influence of drugs. Prosecuting these cases is extremely difficult because the standard is so amorphous. Among one-third of states have adopted laws that make it per se illegal for a person to drive with any detectable amount of a controlled substance, other than a medication prescribed by a physician for that person, in their body fluids. These ambiguous laws are far easier to understand and to enforce with the per se standard drivers knowing that they must abstain from using drugs illegally before getting behind the wheel of a car or face the risk of a DUI. This per se standard has been federal law for commercial drivers in the U.S. since 1988. It is also the standard widely used in the developed world outside the U.S. including western European nations, Canada, Australia, and New Zealand. The reason for this bill to me is that I have a study here; I'll quote that quickly: a census of fatal motor vehicle traffic crashes provides data on presence of drugs among drivers. Of 2,055 drivers with known

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test results in 2009, 33 percent were positive for drugs. While the number of drivers killed in motor vehicle crashes has declined over the past five years, the number of drivers positive for drugs has increased 5 percent. So we've always had the conundrum of someone is impaired with an illegal drug, but what is the legal limit? With alcohol we know it is .08 BAC. This bill would say that if there is any in your system, you are considered impaired and it is a DUI rather than trying to set some sort of a level. I think that illegal drugs are illegal drugs and there shouldn't have to be a set level. We have a statute saying that people who are under 21 years of age cannot have any blood alcohol in their system because it's illegal. This follows that same rule of thinking to say if you are under the influence of an illegal drug, it is illegal. It's the same idea to me. This also does say that if you have a prescription for the medication, you have an affirmative defense, but if you are not using that as prescribed, you would still be able to be under the influence. With that I'd be glad to answer any questions. [LB659]

SENATOR FISCHER: Thank you, Senator Karpisek. Are there questions? Senator Janssen. [LB659]

SENATOR JANSSEN: Thank you, Chairman Fischer. Senator Karpisek, so what you're saying is, what part of illegal don't we understand, a little bit? [LB659]

SENATOR KARPISEK: That's exactly what I'm saying, Senator Janssen. [LB659]

SENATOR JANSSEN: Want to get on the record with that. [LB659]

SENATOR KARPISEK: Yes. [LB659]

SENATOR JANSSEN: What...and I apologize, I haven't gone through this with a fine-tooth comb, but with dealing with prescription drugs, maybe like an OxyContin or a Hydrocodone, something like that, had minor surgery where that's been prescribed to me and the physician says, don't drive while you're on this. It's still prescribed, but if I choose to drive, am I in violation of this law right now or does that...or is that a fuzzy area within this? [LB659]

SENATOR KARPISEK: That could be a little bit of a fuzzy area. I think the main thing would be that it would go to the court and the court could determine were you abusing it. Now, I realize abusing is...can be a different way to think about, but if you're taking them the way you're supposed to, and, no, you shouldn't have been driving, but you're not completely stoned out of your head, I would assume that you would be all right. Now that is a gray area here, as you said. But if you took ten of them and got behind the wheel, then you would be in trouble. [LB659]

SENATOR JANSSEN: Thank you. [LB659]

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SENATOR FISCHER: Senator Hadley. [LB659]

SENATOR HADLEY: Thank you, Senator Fischer. Senator Karpisek, there would not be any problem of double jeopardy here, having these in your blood, does that constitute a violation in and of itself? What I'm saying is, can you be charged somehow if you were walking down the street and had, you know, and somehow you were arrested? [LB659]

SENATOR KARPISEK: Not in this legislation, but I have that bill also that will come in front of Judiciary, so. [LB659]

SENATOR HADLEY: Okay. I just wondered whether...that, you know... [LB659]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Louden. [LB659]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Karpisek, when you say any amount of Schedule I controlled substance now, what is Schedule I controlled substance? [LB659]

SENATOR KARPISEK: Schedule I...there's a list, and I should have brought the list of Schedule I. [LB659]

SENATOR LOUDEN: Okay, but I mean, that's alcohol. [LB659]

SENATOR KARPISEK: No, it would be cocaine, heroine, usually prescribed things that can be abused. But there is a list of Schedule I and I apologize that I didn't bring it. [LB659]

SENATOR LOUDEN: Now what about marijuana? And if they smoke that, that can stay in their system for a month or more? Is that... [LB659]

SENATOR KARPISEK: That is a Class, I'm fairly certain that is a Class II drug which would fall under the different part of this...of the bill, the second part. But again, I think that that would go to the court and the court would be able to constitute whether they were under the influence or not. [LB659]

SENATOR LOUDEN: Well that was one of my other questions, because you say you're constituted an absolute affirmative defense. Now an affirmative defense means that you get picked up and you could be handcuffed and go to jail. You got to go to court before you can declare yourself innocent. Should that be an affirmative defense or should that be, perhaps, a citation and rather than an affirmative defense, because an affirmative defense, I think you got to get loaded up and hauled to the police station. [LB659]

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SENATOR KARPISEK: Hence the...they shouldn't be doing any of that stuff any time if they know they're going to drive. We could look at that, Senator Louden. I think since we don't have, there's no bar like the .08 for marijuana use. You can try to say that the person was, of course, under the influence, take them in, get the blood drawn. Again, there's no level of THC that is legal. It's all illegal, you're under the influence; it's in your body. [LB659]

SENATOR LOUDEN: Now is there any of these other, oh, Vicodin, or something like that in here that would be under that schedule that would show up in there? [LB659]

SENATOR KARPISEK: There is, and as long as you were able to prove that you had a doctor's prescription and you were using it to...the way it was prescribed, you would have your affirmative offense. [LB659]

SENATOR LOUDEN: But you'd still have to go to jail to prove it. [LB659]

SENATOR KARPISEK: Yes. [LB659]

SENATOR LOUDEN: Go to jail and go to court. [LB659]

SENATOR KARPISEK: Yes. [LB659]

SENATOR LOUDEN: Because, I mean, Vicodin is...has been prescribed on a regular basis. I don't know if they're still doing it, because there are questions about it now. But you can get a bottle of those pills if you have any type of surgery or pain or anything like that. And that's what I'm wondering, if that shows up in your blood and you get stopped or get in a wreck or something like that, well then this shows up then and then you're... [LB659]

SENATOR KARPISEK: I think the part about that, the wreck, you're right. Otherwise, if you get pulled over, if you don't seem to be under the influence, it would be just like any other pills that you take; you don't seem to be under the influence, they make you...you may have to do a urine sample, it would show up, you say, oh I have a prescription for that. Again, this is already done for commercial driver's licenses now. [LB659]

SENATOR LOUDEN: Okay. And this is mostly a call by the arresting officer? [LB659]

SENATOR KARPISEK: I assume that it is, Senator. [LB659]

SENATOR LOUDEN: Okay, thank you. [LB659]

SENATOR KARPISEK: Thank you. [LB659]

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SENATOR FISCHER: Other questions? Senator Janssen. [LB659]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thanks again, Senator Karpisek, I was just getting some questions as we keep talking about this. How would it...which in principle it sounds great, I mean it sounds like it's...in practice that I'm worried about. You said it would be similar to like a DUI violation, the penalty of it? [LB659]

SENATOR KARPISEK: Um-hum. [LB659]

SENATOR JANSSEN: And then I see some experts out there, at least one, dealing with Breathalyzers and how we deal with that and if it is the same, somebody gets picked up with whatever, Oxycodone or whatever the class one is...what Schedule I, is that not detectable, and maybe this question could be for somebody who is going to testify later. I don't know. But a Breathalyzer doesn't most likely detect that, so we have interlock systems now that...would that person fall under the same provisions? Or do we have to rewrite different penalty provisions now? [LB659]

SENATOR KARPISEK: We may have to. And right now we have the...you can't drive impaired by drugs. Now I'm not certain how that works, if you're obviously impaired by an illegal drug how they do the DUI. So we already have those things in place. And hopefully there is someone behind me that can talk to that more. But those things are already in place. This would just widen it to say if it's in your system. [LB659]

SENATOR JANSSEN: Again, on premise I'm with you, I'm just looking for the application side of it here. [LB659]

SENATOR KARPISEK: And I understand that too, Senator. [LB659]

SENATOR JANSSEN: Thank you. [LB659]

SENATOR FISCHER: Thank you, Senator Janssen. Other questions? I see none. Thank you, Senator Karpisek. [LB659]

SENATOR KARPISEK: Thank you, Senator Fischer. [LB659]

SENATOR FISCHER: Could I have a show of hands of how many people plan to testify on this bill? One, two, three, okay. First proponent please. [LB659]

MARTY CONBOY: Good afternoon, Chairman. [LB659]

SENATOR FISCHER: Good afternoon. [LB659]

MARTY CONBOY: Senators, my name is Marty Conboy, C-o-n-b-o-y. I'm the city

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prosecutor in the city of Omaha, also the chairman of the model law committee which is sponsored by a number of organizations including the American Study for Alcohol, Crime and Misuse; the Bureau of Health; and the National Prosecutors Research Institute Traffic Law Center. Our committee drafted this language over the last year. There's a group of about 18 people from around the country. And I was very surprised to see it introduced here in Nebraska. I will tell you that we are the first state to actually introduce, as legislation, the entire model law. I think that's commendable and is typical of Nebraska being, I think, one of the more outstanding states when it comes to addressing DUI issues. And so it is a credit to our state. And I think the questions that were asked here are a credit to the fact that there is a real keen interest in making sure we get things right when it comes to DUI, both tough laws, but fair laws that work in application. Right now in drug-driving prosecutions, the only way to be convicted is if you are visibly impaired. And as you know, when you're drunk; we all know what a drunk looks like, and we've seen them, we've been around them, maybe even been there ourselves a few times, but the symptoms are fairly consistent. But with drugs, there are so many drugs often mixed together that it is very difficult to identify the symptoms. A person can be nearly catatonic, but just sit there quietly and you wouldn't really pay any attention to him; others, obviously, are profoundly impaired. But in between are people who are very dangerous when it comes to attention and reaction and judgment, and yet are very difficult to detect in a brief traffic stop. This would enhance the officer's ability to identify those people who appear impaired. And if they do have, in fact, a substance which we know is a narcotic, which can affect judgment and ability to drive safely, it would allow us to prosecute those cases as a per se violation. If you've got methamphetamine in your system, that and you're driving to the extent that the officer would have a right to test you, that's a crime, it's drunk driving. And the same would be true with prescription medications, as Senator Loudon pointed out. Some of those are very common and some do carry those warnings, as Senator Janssen mentioned. Don't drive when you take...you know, that's a narcotic. First of all, if it's not your drug, you're borrowing your cousin's drug or you bought it on the street, that defense won't apply to you. And if, in fact, you are ordered to take that drug as part of a prescription, but the officer can't describe the profound impairment that you would need to prove impaired driving, then obviously, it would not be a per se violation for you either. So really there would be two classes of people; the class that Senator Janssen mentioned; people who get a drug, the doctor says don't drive with this drug, you know, it's very debilitating, and you choose to drive anyway, or maybe you take three pills instead of one because you're sore that day and now you're impaired. I mean, you're falling out of the car. And the things we've encountered are unbelievable. But that person would be guilty of the current law, driving under the influence. If, however, you are pulled over and exhibit symptoms of impairment, and the officer can detect those and wants to have you tested chemically, that test then would detect the presence of that OxyContin, or whatever it happened to be in your system. That would be then a violation. And again, that would occur only if you don't have a valid prescription for that per se law. It seems complex, but there's a limited number of these cases. Other states

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have, in part, adopted some of these laws. One thing I like about this law, it has two sections that make clear, one is, that it is a defense if you have been properly prescribed one of these medications. So a person who gets the medication, is doing everything the doctor told them, is found to have this in their system, would not be guilty of the drunk driving unless they are profoundly impaired. The second thing is, that it does not allow for the prescription to be a defense if you, in fact, are profoundly impaired. Even if the doctor said, look, take this medication, it says right on the bottle don't operate equipment or machinery; you've probably seen those little tags on there; and you chose to ignore that, then that wouldn't be a defense for you. So this is an area, as Senator Karpisek pointed out, we are finding more and more that this is a dangerous situation responsible for a great deal of death and injury on the highways that isn't even detected now. Right now we test people routinely in cases where there is a fatality involving alcohol. We know exactly how many alcohol-related crashes and deaths occur each year in our country. But we don't test for drugs. So we have very little data on how prevalent this is until we see studies like NHTSA's pervasive study that was just done. A third of the drivers tested in fatalities for drugs had drugs in their system. Now that's remarkable, that's a lot. That's probably equal to what we would see with alcohol. It is a huge problem. One that I think this bill takes a great step forward in allowing this state to make the roads safer. One thing I want...just another question that came up to make it clear; the officer wouldn't be able to test you for these chemicals unless you exhibited some symptoms of impairment to meet the statute. Right now you'd have to be involved in a traffic violation or accident and have the officers believe that you have symptoms of impairment. And without those two things, they could not test you at all. So there is a threshold to say if somebody had marijuana in their system, Tetrahydrocannabinol, which does remain in the body fats for up to 30 days for some people. There would also have to be some evidence of cycle activities, there would have to be some evidence that that was actually having an affect on you at the time you were in this collision or committed this traffic violation so that the officer would even have a legal right to use that test at all. And that's something that the courts would protect even under the current language. So there is a threshold protection for that. Other states that have that language that I've spoken with that are involved in this process, those people report that they have not had a problem with that; that this has worked for them. And I would be glad to answer any questions as it is unfortunately a rather technical matter when we talk about drug driving is not a familiar issue, but as much as I can I'd be glad to answer any questions. [LB659]

SENATOR FISCHER: Any questions? Senator Hadley. [LB659]

SENATOR HADLEY: Thank you, Senator Fischer. You know I think it is a very noble thing to look at and it's something that we have to. I guess the concern I have is the last thing you talked about. From my understanding, the recreational use of, for example, marijuana is not totally uncommon in the United States and in Nebraska. And I guess I just have the concern that if somehow a person has used marijuana 20 days ago, gets

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into a minor fender-bender and somehow ends up being tested and the fact that they used marijuana 20 years (sic) ago, is now used...they're, in essence, treated as a DUI in that accident somehow. And I'm certainly not trying to protect them, but I know that alcohol certainly doesn't stay in a person's system 20 days and testing such as that. [LB659]

MARTY CONBOY: Yeah, no other drug is like that. Most drugs have a half life that is fairly quick and so even cocaine and its metabolites, for instance, will be gone within a matter of hours. Marijuana, at least in lower doses, will still show up. And that is, probably, the threshold problem with a law like this. What I will tell you is that that situation you described, the fender-bender, the officer deciding to test the person, that decision to test and the legality of that test would be something a judge would have to be convinced was based on evidence of impairment. There would have to be some showing by the officer that not only did the person get into a crash, but they exhibited symptoms, or made admissions, or had evidence of, so even a person in a crash who had marijuana sitting on the seat next to him would not rise to that level. You would actually have to show some field test, I guess you're all familiar with those field tests that are done at the roadside. You would have to have that level of demonstration of impairment before the officer could legally even ask you to submit to a test. And that would be something a judge would have to review to make sure that that test was actually valid. So if you don't have that...see, there is a protection against those cases where the, for instance, the THC is not cycle active. It is from previous use that doesn't really make you an unsafe driver at the time. That is a difficult situation and marijuana does present a very unique problem in that respect. It is the only one of the illegal narcotic drugs that does present that. [LB659]

SENATOR HADLEY: It is...I guess I'm thinking of the situation where the officer decides to do the field test and thinks there is evidence to possible impairment and the person has a .03 blood alcohol, but has a 20-day-old marijuana in his system, they are basically charged then. Would that be the correct assumption, because you've taken the field test; you've had reasonable cause to do it for whatever reason, alcohol was underneath the limit, but the 20-day-old substance was still in the system. [LB659]

MARTY CONBOY: In that case, the assumption would be that they failed the field test. In other words, they weren't able to do the rudimentary tasks that the officer required. And in that case it's possible that you might have someone that is tested and that the judge would agree the test was lawful. It really would depend then on the fact that they failed those field tests. If they demonstrate in those field tests that they're not impaired, and the officer has no other reason to believe...police officers routinely stop people who have had two or three beers and they're let go. I mean, they're not impaired, they're not breaking the law. I would assume that the same logic would apply there. If you're not failing the tests, if you don't show those signs and the officer would not have any legal grounds to even order you to take the test. And again, I assume the judges...I can tell

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you now it's a very routine challenge in court for those tests; that that would be very carefully scrutinized by the court in the future. [LB659]

SENATOR HADLEY: Just, I guess, just one last question then, and you don't have to answer it, but it would be interesting to know, when we deal with alcohol, it's up to a .08, if there was some way that...if there was a way of telling whether the marijuana in your system was a current usage of marijuana or whether it was something that was 20 days ago that could not have had an impact, so. [LB659]

MARTY CONBOY: Well there is a...the best possible method is to actually test the blood for marijuana rather than the urine. The urine is where those things are eliminated in the distant future. Blood is...when marijuana is actually interacting with your system that will affect your judgment, it's actually going to be found in the blood. And that's where, you know, obviously would be the most relevant test and that's typically what the officers will test for, for instance in the case you described. If it is in the urine, they can quantify it by what they call a nanogram levels. Labs typically have a threshold level that's set by the Department of Health to determine whether it is a legitimate and confident reading. So even a, you know, trace amounts won't do it. There is a...that's why our zero tolerance DUI law is set at .02. We recognize that you have to have a level of confidence before you can save past a zero threshold. The Department of Health is required to put out rules to set those limits. And I...you know, I don't know, those hearings will be conducted just like this to decide with the scientific community I suspect. [LB659]

SENATOR HADLEY: Okay, thanks. [LB659]

SENATOR FISCHER: Thank you, Senator Hadley. Mr. Conboy, do you think it's clear in the bill, or is it clear in the statute that a field test would be required first? Because the tests that are mentioned here in dealing with these scheduled drugs, is that the correct term? [LB659]

MARTY CONBOY: Correct. [LB659]

SENATOR FISCHER: The scheduled drugs, aren't those all lab tests that have to be done? [LB659]

MARTY CONBOY: Correct, but before you can even do the lab tests, you would actually, in the field the officer would have to determine that you are showing some signs...the way the statute reads in 60-6,197, it says, if you have an accident or commit a traffic violation and the officer has reasonable grounds to believe that it is caused by your impairment on these drugs or alcohol. [LB659]

SENATOR FISCHER: Would you know at that point if it's drugs or alcohol? [LB659]

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MARTY CONBOY: Typically not. And that's one of the problems when you talk about drugs; or as Senator Hadley pointed out, maybe there's a mixture, which isn't unusual, it really is difficult to say, you know, what, if anything, leads to the impairment. You get cases where people are taking both a central nervous system depressant and some stimulant like cocaine at the same time and you've got a depressant and a stimulant and it's...the effects can be varied over just in a short span of time. So, basically they know there's an impairment, an inability to do those divided attention tests and things like that. It's up then to... [LB659]

SENATOR FISCHER: How long would it take then...I would imagine the person would have to be placed into custody, taken someplace to get a blood test, a urine test, would those tests still be reliable after a certain amount of time that it takes? [LB659]

MARTY CONBOY: And that's actually... [LB659]

SENATOR FISCHER: I don't know anything about this. So I'm just wondering if that...are we going to allow law enforcement to start making those decisions as they do now on the spot, but then taking people in and because of time constraints, or whatever, having...not having the right...the right time frame to get this done in, I guess? [LB659]

MARTY CONBOY: Well, it's going to be dependent on the jurisdiction first of all. If you're in a more rural area where Senator Louden is, it might...and I don't know how far you are from a hospital, but if they went for a blood test at a hospital, it would probably take them a lot longer than it would say in Omaha or Lincoln where it might be ten minutes away. And so that's going to be an issue for the law enforcement. But unlike alcohol, which our law does provide for some delay, the drug test is for the time of driving. It would be incumbent on the state to prove that that drug level was, in fact, operative at the time the person operated the vehicle. Some drugs...for instance, we do a urine test for cocaine; you probably won't find the cocaine until maybe sometime later when the metabolites start to appear in the urine as it is eliminated. So that would be, I guess, a scientific issue that the state would have to prove to convince a court that that was relevant to impairment or presence at the time of driving. [LB659]

SENATOR FISCHER: But you don't see a problem with this proposed legislation in dealing with that? [LB659]

MARTY CONBOY: No. At least it gives the state the opportunity if the science...if the lab people tell us that it is reasonably valid to go forward on a case. Now obviously, if it's a case where the prosecutor gets such a case, the lab tell them, I can't tell conclusively if this would have been in their system at the time of the operation of the vehicle, such as even with the marijuana. Then it would...we couldn't go forward, because it does relate to the time of driving, the way the law is worded, I think it says, "at that time." So

basically if we can't make that connection through evidence and proof, we would lose. So, it gives us the opportunity and that's something that we don't have now and I think would be a huge step forward in Nebraska. [LB659]

SENATOR FISCHER: Thank you. Other questions? Senator Dubas. [LB659]

SENATOR DUBAS: Thank you, Senator Fischer. Mr. Conboy, okay, I need to really take this down to the most basic level to help me understand what we're doing here. So someone gets stopped; it appears to the law enforcement officer that they're impaired. He does the field test; takes them in, then they do the follow-up lab work. And it comes back showing that there's some type of controlled substance in their blood stream. What will this bill do that currently we can't do? [LB659]

MARTY CONBOY: And that's really the key question and I appreciate it. Right now we would actually have to show that the person was under the influence to a degree to render them unsafe to operate a vehicle. And establishing that for alcohol is pretty simple. Establishing it for drugs, because there are so many, and the symptoms are so unfamiliar, even if an officer was trained and could describe it, a lot of judges or jurors might not recognize...for instance, they'll test the pulse and the temperature and do several eye test looking convergents and Romberg test and they'll have them count and estimate time. I mean there's...the ability to estimate time to us doesn't seem like it would have much to do with driving, but if you've ingested a central nervous system depressant, you're going to find that people think, you know, 30 seconds takes like two minutes and so it really is something that we would know, but this would eliminate the need to show that impairment. If you've got methamphetamine in your system and you have a crash and the officer determines some problem, they would not need to prove that you were impaired to an appreciable degree to operate a vehicle safely. They would need to prove that you had a collision, that you showed impairment, and that you had these symptoms, that had that substance in your system at the time you were operating a vehicle. So it really does make proof a lot easier in that huge spectrum of controlled substances that we do have. [LB659]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Louden. [LB659]

SENATOR LOUDEN: Thank you, Senator Fischer. Well as I've been involved from time to time, seeing blood tests and that sort of thing, I'm wondering if we're opening this up too wide. Now I understand that if you take a blood test for alcohol and methamphetamine or something like that, and for that matter, meth, you can pretty near look at their teeth and tell whether or not they've been on meth. But when you start into this, now there's some of these tests that you do with blood, like if there is Ativan in there, I don't know if there's anybody in the central United States that can test for that because anytime I've seen any blood tests for Ativan we had to send it to Philadelphia. And I'm wondering, you know, when you put this out here, if that should be narrowed

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down to the ingredients or the drugs that can be tested for, so that the people know what they're looking for when they test this blood. Because if they don't know what they're looking for, they might not necessarily be able to find it when you're doing these blood tests because that's kind of serious business when you start testing for any kind of a drug in blood. And this is what I'm wondering. It's been a long time since I've taken my chemistry course, but some of your alkaloids that are prescription drugs would perhaps show up in there, but if you've been drinking water out of Lyman, Nebraska, for 20 years and you got enough arsenic in there, will that still show up in your blood as an ingredient that shouldn't be in there? So this is my concern with this. [LB659]

MARTY CONBOY: Well, it would have to be one of those scheduled drugs. And the scheduled drugs do include the parent drug. And you've hit on a good point, and, frankly, it's just a practical matter; our lab in Omaha, for instance, doesn't test for all drugs. We really do need to have some clue as to what kind of drug it is. We look at whether it is a cannabinoid, a central...there's seven categories that narrows it down considerably. And even then they're looking for primarily the ones that they see most often. The state lab and a few others do have the technology to test in a complete mass spectrum. But most of the tests are conducted fairly specifically. They have a battery, for instance in Omaha they will run for drugs of abuse for instance. [LB659]

SENATOR LOUDEN: And that would be for meth or alcohol or cocaine or some of these type of street drugs. [LB659]

MARTY CONBOY: Coke and marijuana. Correct. And then to get any...there's a few other...the benzodiazepines and some others they test for, other than that you really need to tell them we suspect this drug. Perhaps they found some in the car; the person made an admission; the officer detected certain symptoms consistent with that. They would look for that class of drug and the main ones there. Truthfully, they'll probably miss some if it's something unusual or a combination of drugs. But at least it gives us the opportunity to look for the main ones, the most common ones. And obviously if they're impaired, it's not a problem. But if we're just looking for it in the system, at least this gives us the possibility, but it's not a certainty. [LB659]

SENATOR LOUDEN: Now when this blood is drawn, that's got to be done in a specific way, doesn't it? What is it they call it, a secured manner, or something like that so that only certain people have access to that blood and the whole thing or else it isn't worth a hoot in court. Is that right? [LB659]

MARTY CONBOY: True, that's exactly right. The Department of Health has a Title 177 which deals with the rules and regulations which are passed by the scientific community for the protocols of both drawing and preserving the samples. And there are strict rules in law enforcement for foundation, as well as to keep and preserve that sample and deliver it to court and to testing. So if those protocols aren't followed from the minute the

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person goes into the hospital to the minute they're in the court room, those links of the chain all have to be present or we fail at it. And police are pretty good about that now. I think we've improved tremendously interdictive for drugs. [LB659]

SENATOR LOUDEN: But it isn't the police; it is a lot of times it's the people at the hospitals that draw the blood that aren't aware of what needs all to be done. [LB659]

MARTY CONBOY: True, and it is up to, I guess, both the police officer and the hospital to be aware of what the standard procedures that are required. And typically they mirror what most hospitals have for their protocols for sterile, reliable blood tests. If they take you in on a stretcher and say we need to know what this guy's got in his system, they've got certain colored tubes that they use and certain withdrawal techniques in terms of prepping your arm and such so they don't contaminate the sample. And those have to be followed to the letter. And the Department of Health gets that information from medical facilities. In fact, in order to draw a test, you actually have to be approved as an employee or of a medical center such as a phlebotomist nurse or physician. So, really we've tried our best to make sure that those samples are drawn in a way that complies with the current medical community standards. [LB659]

SENATOR LOUDEN: Okay, thank you. [LB659]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you very much, Mr. Conboy, for coming in today. [LB659]

MARTY CONBOY: Thank you, Senator. [LB659]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Any opponents for the bill? Please come forward. I would like to mention for the record, we've been joined by Senator Price and Senator Hadley quite a while ago. Good afternoon and welcome. [LB659]

BRIAN MARY: Good afternoon. My name is Brian Mary. [LB659]

SENATOR FISCHER: Could you spell your last name please. [LB659]

BRIAN MARY: M-a-r-y. [LB659]

SENATOR FISCHER: Thank you. [LB659]

BRIAN MARY: I've hosted a show on KZUM, political social commentary show, call-in show, for the last six years. It's 11:00 p.m. to midnight. I invite anyone to listen and call in. Abraham Lincoln said concerning prohibition that it makes a crime out of what should not be a crime. And in this legislation, I don't see anything about nanograms and that

they don't count. I see when such person has any amount. With detection systems improving it could be that all here would be criminals if you've heard anything about various pharmaceuticals being disposed of and finding their way into our water systems. I also don't see anything about impairment being a consideration. It is my understanding that reading from a petition letter I have here, Nebraska already has affect-based laws on the books targeting and prosecuting drivers who operate a motor vehicle "under the influence" of illicit drugs. In fact, the city prosecutor just testified that what this bill changes is making it unnecessary to prove impairment. Finally, I would just like to read three paragraphs from an opinion posted by the executive director of NORML on opposingviews.com . And NORML would be the National Organization for the Reform of Marijuana Laws. This is from an article entitled "The DEA's Top 10 'Facts' on Marijuana Legalization", and this concerns comparison to alcohol. First of all, the U.S. Department of Transportation fact sheet on cannabis states: "effects from cannabis-smoking products are felt within minutes and reach their peak in 10 to 30 minutes. Typical marijuana smokers experience a high that lasts approximately two hours." So if the bus driver, nurse, or airline pilot wants to smoke a joint before bed and drive, treat, or fly me the next day, I'm not at all worried, no more so than if they decide to have a shot of bourbon the night before work. Then we have to remember that if cannabis smokers are driving, they are driving now. If pot smoking were such a threat on our roadways, we would have seen the bodies pile up by now. Numerous studies have confirmed what we all know. Drivers under the influence of cannabis tend to follow closely to the vehicle in front of them. Drivers tend to decrease speeds following cannabis inhalation. Drivers with blood alcohol levels of .05 percent were three times as likely to have engaged in unsafe driving activities prior to a fatal crash as compared to individuals who tested positive for marijuana. Finally, drivers with low levels of alcohol present in their blood, below .05 percent, experienced a greater elevated risk as compared to drivers who tested positive for high concentrations of cannabis above 5 nanograms per milliliter. In other words, even the highest cannabis-using driver is less dangerous than a alcohol-buzzed driver who is still below the per se impairment limits of .08 percent for alcohol. And finally, I would just like to read this 4-paragraph letter that would have been addressed to the Nebraska Senate: Please vote no on LB659. We all support the goal of keeping impaired drivers off the road regardless of whether the driver is impaired from alcohol or other drugs. However, LB659 is poorly drafted and would improperly criminalize marijuana consumers for so-called "drug driving", even if they are neither under the influence nor impaired to drive. That is because LB659 makes it a criminal offense for any person to operate a motor vehicle when any level of marijuana or non-psychoactive marijuana metabolites by-products are present in their blood, saliva, or urine. Because marijuana's main metabolite carboxy, THC, remains detectable in certain bodily fluids, particularly urine, for weeks or even months after past use. This legislation punishes drivers for simply having consumed marijuana at some previous, unspecified point in time. Nebraska already has affect-based laws on the books targeting and prosecuting drivers who operate a motor vehicle "under the influence" of illicit drugs. This is a multidisciplinary standard that focuses on the totality of

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circumstances, most importantly that the driver is demonstratively impaired and rightly punishes motorists who drive while impaired from having recently used illicit drugs. Police already employ impairment testing such as field sobriety tests, psychological exams, toxicological screens, and the use of drug-recognition experts to identify and prosecute drivers who are DUI marijuana. There is no need for this additional legislation. While driving under the influence of illicit and licit substances is obviously a serious problem, this proposal neither addresses the problem nor offers a legitimate solution, therefore I urge you to vote no on LB659. And finally I'd say, like Abraham Lincoln said, that it makes a crime out of what should not be a crime and I would ask what don't you understand about something that is irrational and unjust and being proposed as to pander to, I suppose, the parents council against drugs and novelty lighters. Thank you. [LB659]

SENATOR FISCHER: Thank you, Mr. Mary. Are there any questions? (a little crowd applause) We don't have any shows of support please. Thank you, Mr. Mary. Next opponent, please? Thank you. Good afternoon and welcome. [LB659]

JACOB NOWATZKE: Good afternoon. My name is Jacob Nowatzke, J-a-c-o-b N-o-w-a-t-z-k-e and I'm here to talk a little bit about cannabis today. First off I'd like to start off by saying that the scheduled substances that ranges from Schedule I, II, III, and IV on the list of controlled substances, the first schedule contains such things as hallucinogens such as LSD, or hallucinogenic mushrooms, also MBNA, also known as ecstasy, very popular, young crowd, I know. Also, going down the list, Schedule II, there are uses for, medical uses, that does approve for the medical use such as cocaine is a Schedule II substance. They still use cocaine as a local anesthetic in some nasal surgeries that is approved by the FDA. Now on Schedule I, still, which is why I'm here today, cannabis is on Schedule I meaning there's no medical use; carries high potential for abuse and that's what I'm here to tell you guys about today. In 1985 the FDA approved Marinol which is synthetic THC. And on their label with the prescription that you get in the insert packet it states specifically that no one may drive or operate heavy equipment or engage in any hazardous activity unless "it is established that they are able to tolerate the drug and to perform the task safely." Delta-9-THC, as we all know is the active constituent in cannabis that causes euphoria that impairs motor skills, that impairs your sense of reality altogether. However, cannabis has more than just one cannabinoid in it. There are over 30 active cannabinoids in cannabis; a main one being CBD. And unlike THC, CBD does not get you high. What CBD does it actually lowers the effects of THC on your brain. Now what caught my eye here is that the FDA clearly allows that one may drive or operate heavy machinery after one has become accustomed to the drug Marinol, the synthetic Delta-9-THC. Therefore the FDA does approve of operating vehicles and heavy equipment while under THC. And I'd also like to say that blood alcohol levels of cannabinoids, specifically THC, as we've been talking about, don't have very much correlation with motor skill impairment. I'm going to read you something here and I think you'll like it: the basic problem of trying to link blood

levels of cannabinoids or their metabolites, carboxy THC, with level of impairment is that unlike alcohol, cannabinoids concentration in bodily fluids has no clear correlation to their activity in the brain. Urine-tested THC and/or metabolites are clearly useless for the obvious reason that they lag hours and days behind actual exposure. As you've heard plenty of times today, THC can remain in your system, in your fats, for up to and greater than 30 days depending on ones physical activities. All the other alkaloids, as you mentioned, Sir, with your chemistry experience, cocaine, MBNA, heroine, opium, we can sit here and name a lot; all the amphetamines. I know how many kids these days are on amphet...from prescription amphetamines that these all wash out of your system fairly quickly compared to THC. Blood concentrations are somewhat more useful and they can at least help determine whether one has used marijuana recently, in the last hour or two. It comes down to being able to test for the proper metabolites. There are mouth swabs out there. There are other ways of testing that you can see if one is impaired from cannabis alone. The problems are that blood levels are highly variable and have no clear-cut relation to actual impairment or being under the influence, a.k.a, being high. Which means if an officer pulls me over and looks at me and says you're high, that automatically means I'm to be tested for cannabis. Now what I'm thinking, ladies and gentlemen, is that I being a full-time student, keeping a full-time job while being a full-time student and still getting enough sleep is very hard for me. When I work a double, I like to drink a lot of coffee. It keeps me going, I'm a server, it keeps me interactive with people, it keeps me on-touch and on-focus with the tasks at hand. Now, if I was to engage in cannabis, to smoke marijuana two days before I went to work, had a bunch of coffee and I decided to drive home that evening after I got off and everyone knows coming down off caffeine, it's not a very good feeling. You're very tired, you're very irritable, you want to get home, you want to go to bed, you don't like that this person is cutting you off, you don't like that this person decided to make a turn here and you almost hit him. Would I get pulled over coming down off my morning coffee and the officer looks me in the eye and says, you know what, you look really, really tired today. We're going to take you downtown and test you for THC. Now there goes my education. I do not need a DUI for something that has no scientific evidence to back it up. I do not need to be pulled over while maintaining my lifestyle and be charged with something that I partake in the confines of my own home. This is not fair; it is not reasonable. And this bill is clearly not written to standard. [LB659]

SENATOR FISCHER: Okay. Thank you very much, appreciate you coming in. [LB659]

JACOB NOWATZKE: May I say one more thing, Ma'am. [LB659]

SENATOR FISCHER: Short. [LB659]

JACOB NOWATZKE: The National Highway Safety study of 1993, according to our National Highway Traffic Safety Administration that studies how marijuana in actual driving performance published in November of '93, "THC's adverse effects on driving

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performance appear relatively small and evidence from the present and previous suggests strongly that alcohol encourages risky driving whereas THC encourages greater caution." And in a 1993 study of cannabis and driving which was sponsored by the U.S. National Highway Safety Traffic Administration included a review of the literature...the author concluded...the epistemological evidence, as limited as it is, shows that the combination of THC and alcohol is overrepresented in injured and dead drivers and more so in those who actually caused the accidents to occur, yet there is little, if any evidence at all to suggest that drivers who have used marijuana alone are any more likely to cause serious accidents than drug-free drivers. Thank you for hearing me today and I hope that you'll seriously consider what I've said. [LB659]

SENATOR FISCHER: Thank you for coming in, appreciate it. Any questions? I see none. Thanks for coming in. [LB659]

JACOB NOWATZKE: Thank you, ladies and gentlemen. [LB659]

SENATOR FISCHER: (Exhibit 17--Wayne Whitmarsh) Any other opponents to the bill? Any opponents? Anyone wishing to testify in a neutral capacity? I see none. Senator Karpisek, you are welcomed to close. [LB659]

SENATOR KARPISEK: Thank you, Senator Fischer and members of the committee. Want to, again, talk about the impairment piece. Impairment has to be seen for this to be triggered; no different than a DUI with alcohol, the blood-shot eyes, the watery eyes, of course the smell of alcohol. So that has to be..that has to come first; they're not going to just walk up to you, been in an accident, maybe you hit your head and they say, oh, you look drunk, we're going to test you. I don't know that that happens. This per se standard has been in federal law for commercial drivers in the U.S. since 1988. Anybody with a commercial driver's license already does this. This is federal law. This bill is not just targeting marijuana. It is also targeting any other drugs. We can get into a marijuana argument all day if we want to if it should be legal or not. It is not. If you're worried about losing your scholarship, not being able to come back to school, don't smoke it, it's illegal. I don't understand that. The 1993 study that was referenced is almost 20 years old. I gave you a 2009 study talking about how things shake out that sound much different from that 1993 study. I think we're forgetting here that driving is a privilege, not a right. I know I don't need to tell your committee that, Senator Fischer, but I think people do need to remember that. And we have gone after drunk drivers. We've done a good job, a lot better job. My opinion is, why let someone who is intoxicated on illegal drugs go when we're going after the drunk drivers that much. Thank you, Senator Fischer. [LB659]

SENATOR FISCHER: Thank you, Senator Karpisek. Any questions? Thank you, appreciate it. [LB659]

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SENATOR KARPISEK: Thank you. Thanks for your time. [LB659]

SENATOR FISCHER: With that I will close the hearing on LB659 and open the hearing on LB625. Senator Fulton is here to open. I would remind everyone to please turn your cell phones off. [LB659]

_____: Sorry about that. I just got it and I don't know how to turn it off.
[LB659]

SENATOR FISCHER: No, that's fine. Good afternoon, Senator Fulton. [LB659]

SENATOR FULTON: (Exhibits 4 and 5) Good afternoon, Madam Chair. It's tough to follow a good man. Senator Karpisek is a good man. I'll do my best. This is LB625. First I'd like to thank this committee...sorry, for the record my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent Legislative District 29 here at the Legislature. I'd like to first thank this committee for its recognition of the importance of reducing the senseless loss associated with drunk driving; and its recognition of the use of ignition interlocks as an effective tool in making our roads safer. There are going to be two occurrences that I refer to here that's happened during the interim which gave rise to my own desire to introduce what is contained in LB625 before you today. Firstly, there's a part in this bill, and more appropriately, this amendment I'm submitting is what I would submit to replace the bill, that will talk about increasing the penalty for someone who is driving under the influence with a child in the car, it would increase the penalty under child endangerment. Last August an 18-year-old from North Platte was driving under the influence; loss control of his vehicle and flew 200 feet into a soybean field. Among the five passengers in his vehicle were a teenager and a 20-year-old mother who was in her third trimester of pregnancy. That incident caused injury to all the occupants and the death of the baby. Then last October, and not just a few months ago, another 18-year-old was driving under the influence through west Omaha when he ran a red light at a high rate of speed and sent a car with a young newlywed couple careening into a pickup truck. Tony and Jessica Bedient's 5-week-old marriage was cut tragically short as Jessica died of her injuries. Tony, critically injured by the accident, remained hospitalized while his young bride was laid to rest. I've known Tony and the Bedient family for many years. You, my colleagues, might understand that I feel some weight of obligation to use this short time that I hold elected office to do all that I can to ensure that such similar tragedies are never repeated. Tony and Jessica's tragedy was caused by a young man who had previously been cited for DUI with a BAC of .15. This is a high BAC offender who is subject to escalated penalty under our existing statute. Instead of facing license revocation and the installation of an ignition interlock device for one year, this young man was afforded the opportunity to enter into a pretrial diversion program in Sarpy County. Had his sentence been carried out, the Bedients would be with us still today. Despite indications on various Web sites that we have a mandatory ignition interlock law in Nebraska, our statutes do not bear this out. In 2009, there were over

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13,000 DUI arrests in Nebraska. In Lancaster County, 98 percent of those arrested were convicted, however 61 percent of those arrested in Sarpy County were convicted. And even with a statewide 86 percent conviction rate, less than 15 percent of that population had an ignition interlock. Such variance indicates a need for greater uniformity in the application of our laws which, therefore, requires a greater uniformity in our laws. I therefore urge in LB625, as amended, that we simplify our statutes, take out the guesswork for both prosecution and defense and mend the patchwork application that exists throughout the state. The bill primarily affects Section 60-6,197.03 which sets forth the punishment for each level of DUI offense. It requires courts to order an ignition interlock device and corresponding permit for both first offense and repeat offenders. Presently the statute indicates that the court shall suspend the license, but "may" order the installation of an ignition interlock. For first convictions, a court presently retains the option of ordering an impoundment of the license. Given this discretion, offenders are in too many cases afforded the opportunity to reoffend causing not only the potential for further harm to others, but also for further harm to the judicial system and to themselves in terms of facing prosecution for driving under a suspended license. Over 300 such cases in Omaha existed last year alone. We need to break this cycle and streamline our prosecution of DUI offenses. I believe that ignition interlock devices are a key tool in reducing DUI recidivism and improving roadway safety. Recent reports cited by the U.S. Centers for Disease Control and Prevention bear this out. According to the CDC, research shows that ignition interlocks can reduce the rate of rearrest among drivers convicted of DWI by a median of 67 percent, making them more effective than other prevention methods. Drivers with interlocks had fewer alcohol-impaired driving crashes than drivers who had their driver's licenses suspended because of a DWI conviction. The second part of this bill I referenced earlier, I'm also convinced that we need to do more to protect children from becoming victims of a DUI-related tragedy. In addition to the North Platte case I referenced from this summer, there have been several recent publicized occurrences of adults driving under the influence with a minor child as a passenger. Recently a mother was arrested for DUI after her blood alcohol content was measured at twice the legal limit. With her at the time was a 2-year-old daughter as a passenger. Moreover, according to the Department of Highway Safety, over 230 children have been placed in harms way while a passenger in a vehicle driven by an adult who is over the limit between 2005 and 2009. This is why LB625, as amended, also contains a provision in which one convicted of a DUI is subject to a Class IV felony...Class IV felony charge for driving under the influence with a minor passenger. This was first passed in New York and it was referred and is referred to as Leandra's Law and there's a story behind that which I can share with you, but in the interest of time I'll just say that such heightened penalty for DUI with a child passenger currently exists in four states: Arizona, Oklahoma, New York, and Texas. Concluding, I urge this committee to continue the work we have started in implementing swift and certain penalties for DUI and utilizing ignition interlock technology to reduce recidivism and improve public safety. I commend to you the amended version of LB625 as it avoids any federal funding issues by restoring some of the stricken language relating to repeat

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offenders in the green copy. The amendment also eliminates an additional duty imposed on the DMV which I am told by the DMV would significantly reduce the fiscal impact that is cited in the fiscal note. I could have summarized all of this by saying I hope we can move LB625 forward, because while we have been working for years to get tough on drunk driving, and rightfully so, this allows us to both get tough on drunk driving, but also get smart on drunk driving. And I'll close with that and open any questions if you have any. [LB625]

SENATOR FISCHER: Thank you, Senator Fulton. Are there questions? Senator Dubas. [LB625]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you very much, Senator Fulton, for bringing this bill forward and you stated some very convincing statistics as far as success rate when you have these types of programs in place. Is there anything in those statistics that talk about outside of just using the interlock device that involves any kind of treatment? Does that incent the person to maybe get involved in some treatment programs? [LB625]

SENATOR FULTON: Such statistics do exist. I don't have them with me, or off the top of my head. I would say that...it seems to me that utilization of ignition interlock would provide some incentive for an individual who might have a drinking problem to get additional help. And the reason I say that is because when we...I've been at this now for three years, four years, I don't know, I've been at this for a long time, and I...you know, it wasn't my life's goal to come in...this wasn't why I ran for office, but I've learned a lot since getting in here. And this has affected me now in a personal way, not personally, but through friends a number of times. When I brought that bill back in 2008 on ignition interlock, I remember fielding phone calls from individuals who identified themselves as alcoholics. And so I return all my calls and, you know, I don't take joy in returning that call. I figured I was going to get chewed out. But by and large the use of ignition interlock was embraced by those who contacted me because it's a tool. It's a tool that enables somebody to continue to be integrated into his life, in other words to keep working, to support himself, to support his family. But it is a tool if used appropriately can help one identify that he or she has a problem. And so I don't know if there are statistics that will draw out that conclusion, but just using reason it seems to me that by utilizing ignition interlock it provides a mechanism by which one can try to right a terrible wrong that exists in his own life. This is where I'd say...this is getting smart on drunk driving. I'd like to be able to get the hammer out and just crack drunk drivers over the head, but that doesn't always work as evidenced by some of these...I just turned...it was on KETV just the other...just two nights ago, another drunk driving accident and the person that was driving didn't have a license. So we can get hard on drunk...get tough on drunk drivers, take their license and whatnot, but they still get behind the wheel of a car and kill people. And so I'm saying by using ignition interlock it's a tool that helps society, but I think to your question it gives someone a tool by which they might be able

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to mend themselves, to fix themselves. [LB625]

SENATOR DUBAS: I do understand sometimes you have to create that bottom for people who do suffer from the disease of alcoholism and I think this is one of those tools that could be used to create that bottom to help them realize and so again, while I support your bill, just as you mentioned, taking their driver's license away still doesn't mean that they're going to not drive. So we can be punitive, but I'd like to see...I hope that judges would also use this as an opportunity to maybe encourage that person to get the help that they really need. [LB625]

SENATOR FULTON: I hope so, too, Senator. That's some of the rationale, too, that I brought...used in bringing this forward. [LB625]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Campbell. [LB625]

SENATOR CAMPBELL: Thank you, Senator Fischer. Senator Fulton, I appreciate your ongoing commitment to this issue. Several years ago, or it might have been last year, but I remember the committee really tried to work with you in working all this out and there was a question about whether someone, if they could not afford this, are we creating a greater...what...I mean...greater number of people that may need to use that fund? Or how do we...do we need to address something in addition to that before the bill goes to the floor? [LB625]

SENATOR FULTON: I don't think so, and here's why. Now I'm...in saying that, I'm...I want to know...I'm just being clear, I'm not positive about this, but this was LB497, I think, LB497 last year and we talked about the indigent fund which we created back in 2008 with LB736, that was the original bill that I brought forward. The rationale was that in order to apply for the privilege of continuing to drive with an ignition interlock permit, one has to purchase that permit and get...and therefore fund this ignition interlock cash fund. Something else I didn't mention, this isn't General Fund dollars we're talking about; it's Cash Fund dollars to DMV. The idea was those who offend who can afford to pay into the fund and those indigents who can't afford are paid for by the entirety of the fund. That was the policy that we put in place based on the philosophy that those who offend ought to be the ones paying. I believe that should play out going forward if the percentage of people who can't afford is X percent, then mathematically it plays out whether there's...if it's X percent of 10 people, it's the same as in the case of X percent of 100 people. Those who can pay are paying for those who can't. So I think it should play out. That's my own rationale and that's... [LB625]

SENATOR CAMPBELL: Good. And perhaps the department can provide some information to the committee just so that we're ready on the floor because somebody else is going to remember that we went through this. [LB625]

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SENATOR FULTON: Yep. Yes. [LB625]

SENATOR CAMPBELL: Thank you, Senator Fulton. [LB625]

SENATOR FULTON: Thank you, Senator. [LB625]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Louden. [LB625]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well that was part of my question got answered, Senator Fulton, with Senator Campbell there because we did work on something last year about if you couldn't afford an interlock where there was a fund. Now, as I look through this fiscal note here that's supposed to be...they figured what, 9,200 people might apply for interlocks. Now I'm wondering who is going to pay for all of that? And if it's set up in the bill someplace where either the person applying for the interlock would have to pay for some of it or the installation or how that's going to go about, because when you start talking about 11,000 people with interlocks and four full-time employees to look after it, now we're starting to talk about a little bit bigger bucks than we are to start with. So that part would be my first question is how are we going to handle that to take care of the finances to run the operation? [LB625]

SENATOR FULTON: All right. We already have this cash fund set up per the bills that we've passed already, so there's no additional...there's no need for an additional cash fund...the number of FTEs that would be required because there will be more people utilizing the ignition interlock device. There will be a revised fiscal note if...per the amendment that I put out, but still, there are going to be more people utilizing it. Those FTEs would be paid for through the cash fund through those people who offend. [LB625]

SENATOR LOUDEN: And is that cash fund sufficient to handle 11,000 people and 9,200 more? [LB625]

SENATOR FULTON: That was the...that was the...I believe so, according to the fiscal note that we had with the green copy of the bill understanding that there will be some change because of this amendment that I'm putting forward. But my understand is that it would be per that fiscal note. [LB625]

SENATOR LOUDEN: Well because this...the expenditures, we're looking at close to...between \$250,000 and \$300,000 to operate that and that's what I'm wondering if that was just for the full-time employees or...and also there is a cost of these bracelets, or whatever you want to call them, I guess. If you're going to have 11,000 of them out there floating around the state of Nebraska, how much do they cost apiece? [LB625]

SENATOR FULTON: The...say again, Senator? [LB625]

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SENATOR LOUDEN: The ignition interlocks. [LB625]

SENATOR FULTON: The devices? [LB625]

SENATOR LOUDEN: The device. [LB625]

SENATOR FULTON: Right. I think the...this is off of memory now, and those...there may be some who are behind me who can correct the record if I'm indeed incorrect. It's something like \$60 or \$70, I think it is, for installation and then the cost per day is like...I think it's \$2 a day; something like that, again, if I'm wrong, let someone correct the record. [LB625]

SENATOR LOUDEN: Okay, then you rent them for so much a day? [LB625]

SENATOR FULTON: Yeah, I think it's \$2 a day. [LB625]

SENATOR LOUDEN: Well, \$700 a month...or \$700 a year if it's going to be \$200. [LB625]

SENATOR FULTON: Per year, yeah, so right, three...right, right, \$2, 365...right. [LB625]

SENATOR LOUDEN: And who pays that? [LB625]

SENATOR FULTON: The offender. [LB625]

SENATOR LOUDEN: The offender pays that. That's what I'm wondering who is going to...it doesn't say anything in here who is going to pay for what. [LB625]

SENATOR FULTON: Yeah. And that's from our...that's from our existing ignition interlock statutes that we passed, the existing cash fund. So I just...I want to make that clear that increased...if we were to pass this forward, there will be an increased utilization of ignition interlock. And so DMV is going to have an effect to their cash fund. That's covered in the fiscal note. So these aren't General Funds, these are Cash Funds and it's paid for by those who have offended. The actual ignition interlock itself paid for, not by the general public, but by those who have done wrong. And my rationale on that is that, again, driving is not a right, it's a privilege. We pay a certain amount to get a driver's license and that...if you broke that out per day, it's a certain amount. [LB625]

SENATOR LOUDEN: Well I agree that it shouldn't be up to the state to pick up the tabs on that, but...and then the rest of your amendment is mostly addresses if someone is driving...convicted of drunk driving with a child in the car is what the rest of your amendment mostly addresses. [LB625]

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SENATOR FULTON: Right. [LB625]

SENATOR LOUDEN: And do you think...where should that...what is it, 15 years and several thousand dollar fine or something like that. I mean, is that...if people are in that position and doing that, are they going to be able to pay that fine anyway, or are they just going to end up in jail? [LB625]

SENATOR FULTON: Say that again. I'm sorry...should anyone...this is... [LB625]

SENATOR LOUDEN: Well I say the people that usually get picked up for some of these issues, driving with DUIs with children in there, usually don't have the money to pay much of a fine anyway, so is this going to just put more people in jail? Or have we got too stiff of a penalty there? And if they're in jail, how are they going to make a living to support the kids they have if they're driving with the child in there? I mean, we run into all kinds of things with incarcerated people with dependents out there floating around. [LB625]

SENATOR FULTON: Right, okay, I understand. [LB625]

SENATOR LOUDEN: And I'm...and it gets to be a social issue. That's what I'm wondering if that perhaps is...I agree it needs to be a stiff penalty. Are we overdoing it? [LB625]

SENATOR FULTON: Yep, good question. The...as I understand it presently, one could be charged with a Class III misdemeanor for child endangerment. What I'm proposing would be to move it to a Class IV felony. And that which is listed as sanctions for Class IV felony, I just remind the committee that still remains at the prerogative of the judge. So there's a certain...I always say on the minimum side of the sanction and then there's a maximize side of the sanction. There's still volition exercised by a judge. If that answers your question. If there's a situation where putting a person in jail, which I don't know that could happen. [LB625]

SENATOR LOUDEN: Does the court...it says the court shall also..."shall" also send such person to serve at least 120 days in a city or county jail or an adult...I mean, yeah, that's...when you say "shall" why that means that that goes with the sentence and I'm wondering when you had somebody with some kids and a few things out there, if this is...I guess I'm still thinking of that Christina Peterson (phonetic) deal where the mother got sent to jail because of a bad check and the child ended up dead and we're still in a lawsuit over that. [LB625]

SENATOR FULTON: Yeah, I understand. [LB625]

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SENATOR LOUDEN: And this is what I'm worried about; are we getting into something like that when you have a person that was DUI with child in the car, so you know they got dependents to start with. [LB625]

SENATOR FULTON: Right. The...that becomes a question of judgment then. Now the amount of time that one...that a judge might revoke ones driver's license, there's a range there. With a Class IV felony, serving prison time, that becomes a question of judgment. And my take on this is, that driving under the influence is a bad thing because one endangers people, and indeed one endangers oneself also, but when you got a kid in the car... [LB625]

SENATOR LOUDEN: I agree. And I...taking her driver's license away or any of that, I, you know, they can walk or ride a bicycle or anything. But when you start putting them in jail with children involved then we got a social issue and I'm wondering...that's what I'm wondering if that needs to be addressed? [LB625]

SENATOR FULTON: Yeah, that's a judgment call, Senator, and my own judgment is that...with this bill I'd like to get tough on drunk driving and get smart on drunk driving. The getting tough is, you shouldn't be driving drunk if there is a child in the car. It's child endangerment. [LB625]

SENATOR LOUDEN: I agree. Yeah. Thank you. [LB625]

SENATOR FISCHER: Thank you, Senator Louden. Senator Hadley. [LB625]

SENATOR HADLEY: Senator Fischer, Senator Fulton, thank you for bringing this. Just so I understand this, if...on the fiscal note, we talk about 11,000 people will be ordered to apply for the interlock each year. So we're not doing anything to cut down with initial drunk driving charges then, because this is after they have been charged and going forward, is that correct? [LB625]

SENATOR FULTON: It would be the initial...the charge itself I...yes, you're correct. The only nuance to this, or the only thing I would add for your own reflection is that oftentimes an individual gets busted for drunk driving if they don't have the ignition interlock. What we've seen is, that they'll still get in...if they have their license revoked, they'll still get behind the wheel of a car and drive, even if they don't have a license. [LB625]

SENATOR HADLEY: Do we have a percent...do we know what percentage of people who have been convicted of a DUI are then rearrested during the time that they would have had the interlock? [LB625]

SENATOR FULTON: I do not have that here, but I'm almost positive that there's a lady

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behind me who would have an answer to that. [LB625]

SENATOR HADLEY: Okay. Because I...you know, the two numbers that I get are 11,000 and currently about 1,800 people are using the interlocks now. So, you know, they're...and we're using them...what, second and third offense now so that's about 15 percent of the first offense. Does that make sense? [LB625]

SENATOR FULTON: It does; I just...that's not entirely true. I mean, the judges do have the volition to utilize ignition interlock, but for one...for first offenders. But for one reason or another, they are not always doing so. And so you're trying to make a correlation as to are we actually cutting down on drunk driving by putting this forward. [LB625]

SENATOR HADLEY: Right. [LB625]

SENATOR FULTON: And I would say that we would be cutting down on the...yes, I think there will be...if we didn't move this forward, there would be more cases in court dealing with drunk driving. If we do move this forward, I think there will be less and otherwise. [LB625]

SENATOR HADLEY: Because I guess my point is I worry that we do it for a period of time, the interlock, and then it goes away, right? After the person is charged with the drunk offense, we have an interlock system, they're on the straight and narrow for X number of days or months and then it goes away and they can get behind the wheel drunk again. [LB625]

SENATOR FULTON: Yeah. Yeah. That's legitimate, yes. There are...there have been individuals who have requested ignition interlock even after their sentence has ended. That's not to say that, you're right, that's a problem. [LB625]

SENATOR HADLEY: And just one last thing. The way reading it, any car that's available to them also, right? And that means if they happen to have a...their work...everything...so we got 11,000 people that are going to have to have interlocks on maybe numerous vehicles if... [LB625]

SENATOR FULTON: If they drive numerous vehicles, then yeah. And I'll say...this is something just thinking through, if the committee has an idea as to how we get around this, if we require by statute somebody who gets busted for drunk driving to put in ignition interlock on a vehicle and they drive two vehicles, I mean it seems to me that would be a way for someone who has a problem to get around that one ignition interlock. So that's how to get at the problem, but...I don't know, if the committee has a better idea then I'd love to help on it. [LB625]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Price. [LB625]

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SENATOR PRICE: Thank you, Senator Fischer, very much. Senator Fulton, I'm glad you bring something forward. Having personally had to live through my wife getting hit by someone who had been drunk five different times, only convicted once, but still drunk five times, having an interlock on his vehicle might have precluded him driving again and...but, and Senator Hadley hit a lot of what I wanted to say, but I also wanted to say, I'm kind of troubled that we have such a large delta and those that could have an interlock and those that don't get it, obviously over 9,000 people a year, the courts have the opportunity to afford them an interlock and they're not doing it. And perhaps the next person behind you will have a recidivism rate for those individuals who get another DWI; because you know, right now, we're doing a 2-1-3. So you wouldn't have any type of recidivism rate there of repeat offenders. [LB625]

SENATOR FULTON: We...I've seen the number and I've cited the number before, but I don't have it at my fingertips. I know the number exists and we could get it to you, I just don't have it with me. [LB625]

SENATOR PRICE: It's almost like 1 percent of our population. [LB625]

SENATOR FULTON: Is that right, out of 1.8 million? [LB625]

SENATOR PRICE: (Inaudible) sure of the driving population, but I appreciate that very much. [LB625]

SENATOR FULTON: Oh I see, okay. Yep. [LB625]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Janssen. [LB625]

SENATOR JANSSEN: Thank you, Chairman Fischer. Senator Fulton, just the last kind of part there, listening to Senator Hadley kind of jogged this as...I guess I was...and we just got this amendment, at least I did, just went through it that did see kind of a...almost a big issue, big problem with that "all cars that are accessible", that just seems undefinable. And the reason it jogged my memory is we had a car dealer from Fremont in here today and I know several of their employees, I mean I'm going extreme here, but we do a lot and this particular employee drives people to and from, you know, I'm going to get my oil changed, I drop it off, he drives me back. He has...you know, a car salesman has a whole fleet that they could...I mean, don't you think we could...and you left it up...you kind of said, go ahead committee, do what you need to do...but I would think the primary...if there's a way around this, people are going to find a way around it I think. And I'm big...I'm a fan of the interlock. But don't you think just the primary vehicle that person drives. I mean, if somebody wants to go around it really they're going to. [LB625]

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SENATOR FULTON: Yeah, I guess I need to think on that a little bit before committing to anything, but...that sounds reasonable, Senator. I just...the other side of it is, at my house we have...my wife and I each have a vehicle and if I ever got busted for drunk driving and they stuck me...had me take an ignition interlock device, then, you know, I drive two vehicles. And I just...I get the sense there might be others who might be in that boat. So you would want to have...if the privilege of driving is to be afforded to someone who is supposed to be using ignition interlock, you want to have that device on any vehicle that this person is driving in. So how do we get at that with language? I understand that, yeah, I mean you could have an extreme situation where an individual has access to a thousand vehicles, pretty hard for him to...so I'm open to any suggestions as to how we could make this clear. But I'm just dealing with what I think is the case for a lot of people that a lot of people have access to more than one vehicle and regularly drive more than one vehicle. [LB625]

SENATOR JANSSEN: All right. I just get worried about some of the restrictions as you're trying to move forward on this as we do often times personalize things. My brother stores his car in my garage because I have a bigger garage, so I do have access to it. I don't think he would appreciate an interlock slapped on it if that were the case. [LB625]

SENATOR FULTON: Yeah. Right. [LB625]

SENATOR JANSSEN: And so I think we may be a little bit overboard here. [LB625]

SENATOR FULTON: Yeah. [LB625]

SENATOR JANSSEN: And maybe there will be a day when all of them have them out of the factory so I...yeah...so. [LB625]

SENATOR FULTON: Yeah, I've been hit on that before. That's not...to be clear for the record, that is not my intention. But, yeah, Senator Hadley, can't get much past that guy. [LB625]

SENATOR FISCHER: Thank you, Senator Janssen. Other questions? Senator Louden. [LB625]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Senator Fulton, as I...at the present time, can...does a judge...can he allow a person to drive to work with a revoked license? Because see on your bill here, if it is revoked for a year, they can't drive for 45 days, but then they just have an interlock for the rest of the year. But I'm wondering at the present time if they have to have...if they can drive to work without an interlock device? And the other question I'm having is when you repeal some of these original

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sections here, are you repealing the part that the judge can allow for giving them a license without an interlock device? [LB625]

SENATOR FULTON: The second...the first question I got; the second question are we allowing for? [LB625]

SENATOR LOUDEN: Well you're repealing some of these sections and I haven't looked them up in the statutes on the sections that are being repealed. What are those sections? Are they...in the back of your bill here...are they...do they have anything to do with allowing for driving with a revoked license to work? [LB625]

SENATOR FULTON: I don't think so. Let me...I'll think on that while I'm answering question number one. This part about driving under the influence with a child in the car, that is a...that would be a sanction in addition to... [LB625]

SENATOR LOUDEN: Yeah, I'm talking about the first part of your bill where you're just having them do this interlock device and who has the interlock device in your first part of your bill where you have to have ignition interlocks upon convictions, your violations and that sort of thing. [LB625]

SENATOR FULTON: Okay, so the question is that that period of time in which the license is revoked? [LB625]

SENATOR LOUDEN: Yeah. [LB625]

SENATOR FULTON: That, okay. [LB625]

SENATOR LOUDEN: Does it...in order to drive a car, does a person have to have an interlock...ignition interlock now, or can they get a work release? [LB625]

SENATOR FULTON: As it stands right now, it's up to the judge to decide. [LB625]

SENATOR LOUDEN: That's what I thought. Okay. [LB625]

SENATOR FULTON: Yeah. [LB625]

SENATOR LOUDEN: It goes either way. Now my next question is, then being we worked our way through that one, when you look at the back of your bill where you've repealed a bunch of those statutes, are those the statutes that gives the judge the authority to do that? [LB625]

SENATOR FULTON: Where is that, can you point me to where? [LB625]

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SENATOR LOUDEN: Well on page 18, it's always the tail-end of the bill that always tell you...that's always the gist...that's where the smoke and mirrors come in on these bills is when you look at the...and what's been repealed, you want to watch that from time to time because there's...how slick...how fancy stuff gets passed through. That's the reason I'm asking is that part, when you repeal that, then does that part repeal the part that the judge has that discretion of doing either way? [LB625]

SENATOR FULTON: I don't think so, Senator, but I don't have these sitting in front of me, so why don't I just get back to you with the answer and I'll show you and I'll prove it. [LB625]

SENATOR LOUDEN: Okay. Okay, then you're not doing any smoke and mirrors that you know of. [LB625]

SENATOR FULTON: Maybe just smoke, but not mirrors. [LB625]

SENATOR LOUDEN: Okay, good enough. [LB625]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you, Senator Fulton. Could I have a show of hands of how many people are going to testify on this bill today? One, two, three, four. Okay, thank you very much. [LB625]

SIMERA REYNOLDS: (Exhibits 6 through 11) I have a whole bunch of literature for you. My name is Simera Reynolds, S-i-m-e-r-a, Reynolds, R-e-y-n-o-l-d-s and I'm the executive director of Mothers Against Drunk Driving. And I want to thank Senator Fischer and the Transportation Committee members for allowing me to be here today. [LB625]

SENATOR FISCHER: Thank you for coming. [LB625]

SIMERA REYNOLDS: Thank you. Senator Fulton already covered much of my testimony so I'll try not to reiterate it too much and then answer questions because I know some of the answers to some of the questions that were posed here. But first of all, I would like to thank Senator Fulton for his leadership on LB625 and mandatory ignition interlock for all offenders at .08 and above, recognizing transportation of our children while over the legal limit as a felony offense. And thank you to Senator Fulton because sometimes this is an arduous task to take on year after year as your legal counsel well knows. Mothers Against Drunk Driving commends Senator Fulton for bringing this issue forward to the legislative body once again. We all know drunk driving is a crime, and a violent crime that kills one person in our state every five days. And as Senator Dubas said, let's drill things down. I also am going to say that one child is killed by an adult drunk driver every three months in our state. Every three months a child dies because of an adult drove drunk with the child in the car and that is in our state.

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Despite the fact that lifesaving technology exists, it is not uncommon for the courts to ask the offender if he or she wants it installed. I'm really...we're asking the offender if they want it installed. The law requiring ignition interlock in its current state is an optional law. For MADD optional equals offender-friendly. I think that this is a disservice to all of our victims that have been impacted by this crime. In 2009 there were more than 13,000 arrests for DWI and our state conviction rate stands at about 86 percent. Senator Fulton already articulated much of this. And yet in 2009 there were only 1,800 ignition interlocks in use. That means one for every seven offender got an ignition interlock. Recently the Center for Disease Control released that ignition interlocks do cut drunk driving and reduces recidivism. Nebraska policymakers already knew this. They acted on it; they passed LB736. I believe that that was like one of the only bills that I know of that went through General File, Select File, and Final Reading without ever receiving a no vote. However, it is unclear that the use of ignition interlock has not been adopted at the county court level. From our court monitoring program, we can see that there is clearly inconsistent use of this lifesaving device at best. As a state, we have a duty to provide a lifesaving technology when an offender has been found guilty of driving drunk over our state legal limit of .08 and not just for some, but for every offender at .08 and above. This is equitable treatment of offenders across the state. Additionally, the cost of this device is carried by the offender and does not cost the state any additional monies. MADD wants those that make the choice to drive drunk to be held accountable. They will bear the burden of the cost and the ignition interlock device will do just that. Second, MADD wants to articulate our very strong support for a felony offense provision for those that make the choice to drive with a child in the car at .08 or above. And just...I want to talk a little bit about judicial discretion because Senator Loudon brought up judicial discretion. And we have been asked time and time again as an organization to appreciate county discretion, you know, a county attorney discretion, prosecutorial discretion, judicial discretion, and we do appreciate it. And I don't understand why we can't add felony offense to the toolbox. Just because the felony offense is in there, doesn't predicate whether or not the county attorney or the judge chooses to utilize it. There still is judicial discretion. But right now, it's really not available. Adults that drink and drive with children in the vehicle are child abusers. Child endangerment laws serve to protect innocent children from child abusers, not only those that are physically or emotionally abusive, but also those who victimize a child by driving impaired. Currently in our state, a DWI offender that is transporting their child can be found in violation of child endangerment and then they can be found, you know, in violation of our DUI laws. They're not merged and usually one is pled away. Usually the child endangerment portion is pled away in order to get a DWI conviction. Two-thirds of all children ages 14 and under that are killed in alcohol-related crashes are killed while riding with a parent, a caregiver or a guardian. And this was discovered in May of 2000. These children have no choice and they have no voice. We have an obligation to protect our most precious cargo, the children. In Nebraska over the last five years more than 260 children have been put at risk and 19 have died in alcohol-related crashes involving an adult driver with a BAC of .08 or higher. MADD would ask that you support

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LB625; send it to the full floor for debate and take into consideration that the amendment guts it and blah, blah, blah. And then I would be glad to answer any questions that you may have for me. [LB625]

SENATOR FISCHER: Thank you, Ms. Reynolds. Are there questions? Senator Hadley. [LB625]

SENATOR HADLEY: Thank you, Senator Fischer. Ms. Reynolds, thank you. I guess the thing I think about and I mentioned it to Senator Fulton, the number you have first time arrestees have driven drunk an average of 87 times before they're arrested. [LB625]

SIMERA REYNOLDS: And MADD uses the low level because oftentimes people come after MADD thinking that we're neoprohibitionists. We are not. And so MADD uses one of the very lowest levels in the scientific reports, but it's on average from 200 to 2,000 times before they get caught. [LB625]

SENATOR HADLEY: I guess my question is, should we...what we're working with here is that after the fact, this is after the first... [LB625]

SIMERA REYNOLDS: It's upon conviction. [LB625]

SENATOR HADLEY: Yeah. So that means we're doing nothing to stop the person from driving 87 times before they're arrested. Is that a fair statement? Because they get a (inaudible) after. [LB625]

SIMERA REYNOLDS: Right. Correct. No, this like a tertiary concept. [LB625]

SENATOR HADLEY: So how does the interlock...I understand how the interlock system stops a person from driving... [LB625]

SIMERA REYNOLDS: Reoffending. [LB625]

SENATOR HADLEY: ...during that period of time where they have to use it. But how are we changing that person's behavior so they will not drive drunk again by using the interlock system? [LB625]

SIMERA REYNOLDS: (Exhibit 10) I think from the research and Doctor Roth, I can get you some Doctor Roth information, because, you know, this actually all came about with New Mexico and Governor Richardson and I provided you Mr. Beller's testimony and Mr. Beller had a news story in the Omaha World-Herald that actually four Nebraskans died in New Mexico that started this ball rolling in New Mexico. And one of your questions, I know, is Mr. Roth has seen a 67 percent reduction in recidivism after the ignition interlock has been removed which I think is what you're trying to ask, correct?

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[LB625]

SENATOR HADLEY: Yes, so basically that's a significant number. So two-thirds of the people... [LB625]

SIMERA REYNOLDS: It's a big number. It's a big number. And they have the CDC look at 15 independent studies and it will be put out in the March JAM and you find out that if we used more of them there would be less fatalities. So somebody got to do a study on that. I wish I could have done that study. [LB625]

SENATOR HADLEY: Okay. One last question. The 1,800 that we're using now, is that for second and third offense? [LB625]

SIMERA REYNOLDS: No, I mean that...we have to remember, we passed LB736 in 2008. It did not become effective until January 1, 2009, and so this is 2009 data off of the first year of LB736. So if you were not here for the passage of LB736, but Senator Janssen you were.. [LB625]

SENATOR HADLEY: And I wasn't. [LB625]

SIMERA REYNOLDS: Yep. So this is the data, really off of the first year. And what we're finding through court monitoring is the judge will say to the defense attorney, does your client want ignition interlock? [LB625]

SENATOR HADLEY: So this is first... [LB625]

SIMERA REYNOLDS: Well that is pretty disappointing to MADD to have a judge, you know, to ask the defense attorney if the client wants ignition interlock when it is supposed to be "a mandatory concept" and it's not. [LB625]

SENATOR HADLEY: Okay. So in answer to my question, the 1,800 are interlocks, the first offense. [LB625]

SIMERA REYNOLDS: They could be any offender. I don't know what offense they are. They could be first, second, high BAC. [LB625]

SENATOR HADLEY: Because we had...I thought we had a bill recently dealing with second or third offenses and interlocks. So I'm just curious as to... [LB625]

SIMERA REYNOLDS: Could have been an aggravated high BAC and the...and a lot of them...actually God bless some of the offenders because some of the offenders come in and just say I want ignition interlock because I want to do my job. And to speak to Senator Janssen's question about the cars, I think...say you have a car that you drive in

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the winter, my husband drives a motorcycle, it doesn't work on a motorcycle, but, you know, but then in the winter he drives the car that I drive. So we have to share a car. So if he had been arrested, you know, it's conceivable that we would have to put it on the car that I drive because during the winter that would be his alternate vehicle assuming he had...say he had a Mini Cooper that he drives in the summer, or a convertible that he drives in the summer, but maybe you have a convertible that you drive in the summer. I think that the language that Senator Fulton puts forth affords somebody to drive both vehicles. And I think maybe you should look at it in that manner versus the other manner. Does that make sense? [LB625]

SENATOR JANSSEN: I'm just trying to wrap my head around what it would be like living in your house if your husband got a DUI. (laughter) [LB625]

SIMERA REYNOLDS: Oh my gosh. Well first of all I'd lose my job. I better get that mortgage paid off. [LB625]

SENATOR JANSSEN: (Inaudible) Thank you. [LB625]

SIMERA REYNOLDS: So, um... [LB625]

SENATOR FISCHER: Other questions? Senator Campbell. [LB625]

SENATOR CAMPBELL: Thank you, Senator Fischer. Ms. Reynolds, I'm pretty sure I wrote it down correctly, you said that one for every seven cases got an interlock. Did I hear that right? [LB625]

SIMERA REYNOLDS: Right, because there were 13,000 arrests, and 86 percent of those were found guilty, that would be approximately 11,000. If you divide 11,000 into 1,800 I think you'd get 6.9. [LB625]

SENATOR CAMPBELL: Okay. But in any case, you are also very concerned about the (inaudible) cases where the judge is saying, do you want one, rather than this should be mandatory. Have you begun to track this by county in the state? I mean, do we have any idea where we might be able to put some gentle public pressure? [LB625]

SIMERA REYNOLDS: Oh, well yes. MADD has a grant through the Office of Highway Safety to observe 22 counties currently. And we go in and monitor them. And we do know...I mean there's one judge that does 87 percent of are...or use ignition interlock. And then there is another county that is 15 percent compliant. So that's the problem is that it's not from county to county; we have patchwork and inconsistent treatment of offenders which really, I think, is paramount. We should be treating everybody the same and everybody should know what to expect when they get arrested for DUI. And we shouldn't have it where we're like, oh, you got that; well I only got this. [LB625]

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SENATOR CAMPBELL: I agree with you. But all I'm trying to say is that any of that kind of data would be helpful if we saw it. [LB625]

SIMERA REYNOLDS: And I have some data and if it gets to the floor, I'll be glad to share it with all of you. [LB625]

SENATOR CAMPBELL: Thank you very much. [LB625]

SIMERA REYNOLDS: And if you need it...if you need it, you know, feel free to contact me and Senator Price; and Dusty knows how to get ahold of me. I'll be glad to provide you whatever you need. We have some sample data that I call it a snapshot, we sent it over to the Omaha World-Herald and it looks at Sarpy County, and Lancaster County, and Saunders County because, you know, kind of rubber rule and two metro areas and two different metro areas. [LB625]

SENATOR CAMPBELL: That would be great. Thank you. [LB625]

SIMERA REYNOLDS: Okay. [LB625]

SENATOR FISCHER: Thank you, Senator Campbell. Other questions? Senator Louden. [LB625]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well Ms. Reynolds, I have no problem with these interlocks, but, yes, there is, even in your statement, you have...you passed out here, there is a work permit for people that have been convicted of drunk driving, they can get a work permit. And that is up to the judge to decide and part of that reason is somebody has either drank too much going home after work or some other time and then they have to work all the time so the judge allows them a work permit. I mean, I've seen those. [LB625]

SIMERA REYNOLDS: But you know that the ignition interlock provides you to travel to and from work, to and from school. [LB625]

SENATOR LOUDEN: Well yeah, but I'm talking about somebody that, say, he's a plumber or carpenter and he's got two or three pickups and a car to drive to work and vehicles to drive around when he gets at work. That's usually where he...or he works for somebody that requires him to drive and deliver goods or something like that, that's usually where your work permit, as I've seen it, comes in. What I'm wondering about, if you've looked over the amendment or not, but this part in here, the court shall also sentence such persons to serve at least 120 days imprisonment in the city or county jail or an adult correction center. That's in the amendment. And that's if someone is caught driving with DUI with a child in there. [LB625]

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SIMERA REYNOLDS: Right. [LB625]

SENATOR LOUDEN: And I agree, that's serious offense. But do you think that sentence, because it's already in there, that they could...they would be guilty of a Class IV felony which requires jail time and a fine at the discretion of the judge. Do you think that is a little bit too severe in there, because now we're getting into somebody that is going to jail with a...? [LB625]

SIMERA REYNOLDS: No, when one child dies every three months because someone makes the choice to drive drunk with their child in the car, no. [LB625]

SENATOR LOUDEN: Okay, then how are you going to handle that? When you put somebody in jail and they have a minor child that's a dependent, how are you going to handle that socially? Who is going to take care of that kid or who is going to look after that kid while that person is incarcerated? [LB625]

SIMERA REYNOLDS: Well one would hope that the concept of having a felony offense while driving with a child in the car would send a strong deterrent message to the community and that they would make the choice not to drive impaired with children in the car. [LB625]

SENATOR LOUDEN: What I'm wondering is, you're trying to solve one problem if you just created two by putting that person in jail because it's... [LB625]

SIMERA REYNOLDS: I don't believe so. And I don't believe that it's panned out that way in New York. New York's law has been successful. [LB625]

SENATOR LOUDEN: Okay. Does New York have a "shall" or do they have a "may"? [LB625]

SIMERA REYNOLDS: "Shall" it's mandated. [LB625]

SENATOR LOUDEN: Okay, because this is...we're running into the problems now because either that child goes into foster care or the judges or the county attorneys, or somebody has to find a place to put that child. [LB625]

SIMERA REYNOLDS: Right. But I think there are two separate issues and that one is mandating ignition interlocks and the other is adding felony offense, child endangerment to the toolbox for the county attorney to use when a heinous crime is taking place. Now, it is the county attorney's judicial prosecutorial discretion to make the choice of whether they want to file a misdemeanor or whether they want to file a felony. [LB625]

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SENATOR LOUDEN: There's no discretion here. At the end of it, it says "shall." [LB625]

SIMERA REYNOLDS: On the felony offense. [LB625]

SENATOR LOUDEN: Okay, thank you. [LB625]

SIMERA REYNOLDS: You're welcome. [LB625]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Always appreciate you coming in, Ms. Reynolds. Thank you so much. [LB625]

SIMERA REYNOLDS: Well thank you for having me. [LB625]

SENATOR FISCHER: Other proponents, please. Good afternoon and welcome. [LB625]

MATT STRAUZ: (Exhibit 12) Thank you. My name is Matt Strausz and it's S-t-r-a-u-s-z. Appreciate the opportunity to present to your committee today. My name is Matt Strausz and I'm the president of Smart Start of Nebraska and we provide ignition interlock services here in Nebraska. I'll be very brief. A lot of the stuff Senator Fulton and Ms. Reynolds has already gone over here on mine. I just wanted to say that as far as LB736 went, whenever you guys passed that a couple of years back, the main objective from our perspective, and from what we saw, was that we were going to get interlocks...the goal was to put interlocks on each person's vehicle. And the reason that that was passed is because of the statistics that were shown on what they could do. And we were excited and we had been working with MADD about being able to show Nebraska the same kind of numbers that these other states that had passed the same things had been seeing because that was what was, it was exciting, and that's why almost every state this year is hearing some form of ignition interlock bill for first offenders. The biggest barrier, and we could go through the statistics and studies, but the biggest barrier to actually achieving those kinds of numbers is actually just getting the interlock on the vehicles. Like Ms. Reynolds said, 1 out of 7 is actually getting installed and even in the case where they are getting installed on a first offense with probation, they're only being installed for 60 days. One concern that we have heard from probation is that by the time the individual has the unit installed and then it is removed before they even get the first set of reporting from it. So actually being able to take that data and use that data towards helping form an action plan for each individual offender, they don't get the reports in time and 60 days, just quite frankly, isn't quite enough to even, you know, learn those habits, learn those processes and changes. What we see with offenders, I operate in three different states, I've done it for a little over ten years, and what we see is that about...in the first month or two months we get a lot of calls on Saturday mornings, Sunday mornings about why our unit doesn't function correctly. It's because they can't start their vehicle. It's not because the unit is not

functioning correctly, it's because they're still intoxicated from the night before. But I haven't drank since 10:00 at night and now it's 11:00 in the morning and I still can't start my car. There's no way that I can still be intoxicated. Well, it's a learning process. It's learning how long it takes for alcohol to filter through your system; how fast your body does and doesn't metabolize alcohol whenever you're sleeping versus whenever you're awake and actually doing things. We explain to people, it's like diets, whenever they say don't eat after 8:00 at night. Why don't eat after 8:00 at night? Because whenever you're sleeping, your body doesn't metabolize it, it just sits there. The same thing with alcohol, your metabolism slows down while you're sleeping. The compliance portion of it, we also have a problem with, in my opinion, is strictly because it's only 60 days and people can just wait it out. In other states, and I know you guys don't need other states' solutions, but other states have program where...hybrid programs, states that have been really effective with it, like New Mexico, Florida, even Kansas just recently in 2007 they added a compliance component to it. The compliance piece was basically administrative and they made it so until the...they suspended you or restricted your driver's license until proof was received by the DMV that you have completed your interlock period. Our compliance in Kansas; I live in Kansas, our compliance in Kansas went from 12 percent that year...this year we're over 50 percent and we expect when the numbers come back for 2010 that we'll be somewhere in the 70 percent or 75 percent range as it has been growing. So tying the plan or tying the restriction to the driver's license being reinstated, somebody would effectively, until they've show proof that they've completed it, they would constantly be in a situation where they were under restriction interlock. The things we ask...or that we think need some form of a change is the six months period...or the 60 day period. We feel that any...we, and I guess, a report here by NHTSA, NHTSA suggests that anything under a 6-month interlock program is what they consider to be ineffective. We also think that a good place in the bill would be to add "until the Division of Motor Vehicles receives proof of completion", this would eliminate the ability for somebody to just wait the program out driving on suspended...a lot of people in other states that I've dealt with have got to the end of the wait-it-out period and as soon as the proof of compliance was added they miraculously found a car that they didn't previously own and got the interlock put on whenever they realized they weren't going to be able to just wait out the period. The longer the period of interlock or restriction to an interlock without complying, if somebody says I can wait 60 days, if I can get away with not driving for 60 days, I won't drive or I'll try to risk it. But if you know that until...you have to risk it forever until you can do it, that's not going to work as well. One other thing I was going to...with your own and operated, or all vehicles, other states have it where it's...you're required to have interlock on any vehicle that you own or operate. Some states...and they're owned or operated as a federal...it's for federal language. That's what they require that it says owned or operated, but it's not necessarily every vehicle that you have, it's every vehicle that you plan on operating. So that would...and then, as far as, you had...Senator Loudon had asked on the employer vehicles, if you have several different vehicles with your employer, different states have what they call an employer exemption and it allows you to drive any vehicle that you, for

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work, as long as you're not whole or part owner of the business, that you can drive as long as you have the interlock installed on your personal vehicle. Just a thought on language for that. And as far as the indigent fund goes, my last thing I'll touch on, as far as the indigent fund goes, the indigent fund so far from manufacturer side of things, we have...I don't think we've seen 20 or 25 total since it went into effect that I have applied for it. I think right now we have 7 total that are on...that are taking funding out of the indigent fund. So I don't think that you're going to see...regardless of what kind of compliance you get, I don't think you're going to see a problem with that. And I'd be surprised if you saw the statistics from the DMV on that or from the fund; I'd be surprised if they're not considerably growing because I don't think that many people are exercising it. And the ones that we have seen, that have applied for it, we've done two 2009 Lexuses and one 2011 Ford F-150. And they were sitting in the lobby joking about how they ran their own business, they're self-employed and so they didn't report their income and they could show that they deserved that they could have it paid for by the court. So, I don't think you're going to see a funding issue with the indigent fund. I appreciate the opportunity to... [LB625]

SENATOR HADLEY: Mr. Strausz, thank you. Are there questions for Mr. Strausz? Senator Louden. [LB625]

SENATOR LOUDEN: Thank you, Senator Hadley. Well, yes, I'm glad you brought that up on the interlocks. Should there be something in this statute then to state that if they have an interlock on their personal vehicle they can drive company trucks or something like that that they're not an owner of? [LB625]

MATT STRAUZ: I think that it makes it... [LB625]

SENATOR LOUDEN: I mean, it isn't in our statutes now. [LB625]

MATT STRAUZ: Well what we had...I'm basing what I'm saying off of our law in Kansas right now. We...they determined in Kansas that since there was a lot of...and Nebraska is primarily a farming community as well, that there's a lot of high school kids or college kids that work on a farm during the summer and there's, you know, some farms have 25 different vehicles, feed trucks, and grain trucks, and all sorts of stuff; what they said is that as long as you were compliant...you have to apply for your interlock permit. Just like in Nebraska you have to apply for an interlock permit. Once you've applied for the permit, then you qualify for the employer exemption and our employer exemption wording is less than a paragraph. It would be pretty easy to put into the bill. [LB625]

SENATOR LOUDEN: Okay. [LB625]

MATT STRAUZ: And it would...I could get you a copy of what other states have for

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that, but it just basically...exactly what you said, that as long as you have applied and you qualify for the interlock permit and you have one installed in your personal vehicle, that you qualify to drive any employer vehicle that you're not wholly or partly owner of. [LB625]

SENATOR LOUDEN: Okay. Yeah, I would like that. I think that would be very important for some of us in this. [LB625]

MATT STRAUZ: Absolutely. [LB625]

SENATOR LOUDEN: Thank you. [LB625]

SENATOR HADLEY: Thank you. I have a question, Mr. Strausz. Since you're basically in the business, is there data that you have seen about that this comes down to recidivism? [LB625]

MATT STRAUZ: We see...we see...just from our reporting, and it would be...there are some studies out there that I'd love to just send over to you some...Senator...Ms. Reynolds said something about Doctor Richard Roth, he's an independent researcher out of New Mexico and he has made his whole living off of doing research on interlock devices and research studies and on and on and on. He goes through and does breakdowns and shows time periods of how long the interlock is on and what the likelihood is for reoffense on that. What we see is that in Nebraska we...very few people take it seriously on the 60-day programs. We have...our highest percentage we have almost 10 percent what we call lockout or they don't show up for appointments on the 60-day programs; whereas, in other areas in Kansas on a second offense if you're aggravated you're going to be on for over...you're going to be on for two years on the interlock program. Those people get to the end of the program and they're the ones that tell us or send the letters and tell us you'll never see me again, I will never be part of this. As for actual numbers and actual data, I think that it would be interesting to take a look at violations that come during the first six months of the program versus the last six months of the program on a 2-year. I think you'd find...and I don't know for a fact, but I think you'd find in the last six months of a program like the 1-year program, or a 2-year program or whatever, you're going to find a drastically lower number of violations at that point then you are in the first...it's a learning process. A lot of people have, like I said earlier, have no idea how long it takes. In certain situations, like in Omaha earlier this year, we did the Wet Lab demonstration to show the periods of time that it takes to get to that level and then how long it takes for it to come back off of that. And Lieutenant Russ Zeeb conducted that and he has some good research on that. But you get people, even at a setup event like that that have no clue on that. It's amazing to watch some of those, but from an everyday offender standpoint, you don't know how long that's going to stay in your system or how long it takes to get there, so we like doing those kind of demonstrations just to prove to people...or not to prove, but to show. A lot of people are

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very interested to see that. [LB625]

SENATOR HADLEY: Then just one other quick question; I should know this...the answer. When we're talking about this type of interlock system, does this mean a zero tolerance in alcohol before you can start the car or is it under the legal limit you can still start the car? [LB625]

MATT STRAUSZ: It's set up by the state rules and regs. And I believe currently that it is .03 is where...or .02 is where you get a warning, .03 is where you get a failure and you can't start the vehicle, and then a .04 is a violation level, that's where you get a violation. So anything above a .03 you're not able to start it. Some other states have different settings, but that's... [LB625]

SENATOR HADLEY: Okay, I just wanted to be sure it wasn't... [LB625]

MATT STRAUSZ: It's not a .08 and it's not at zero. [LB625]

SENATOR HADLEY: It's not a zero or point... [LB625]

MATT STRAUSZ: Right. [LB625]

SENATOR HADLEY: Okay. [LB625]

MATT STRAUSZ: Generally speaking they don't want anything under a .01 because your body can produce alcohol to aid in digestion up to about a .007. So anything below a .01 would be a bad idea and then you don't want it to be too close to .08 because that level can still be rising when you get in the car. And you don't want it to say okay "pass" you can start the car and then 30 miles down the road you're over the legal limit. [LB625]

SENATOR HADLEY: Okay, thank you. [LB625]

MATT STRAUSZ: So I believe that's why they set those. [LB625]

SENATOR HADLEY: Any other questions? Thank you Mr. Strausz. Are there further proponents? [LB625]

MARY KOTAN: Good afternoon. My name is Mary Kotan. Thank you very much for taking the time to hear me. The only guarantee I have in life... [LB625]

SENATOR HADLEY: If you would spell your last name. Thank you. [LB625]

MARY KOTAN: I'm sorry. It's M-a-r-y K-o-t-a-n. There are no guarantees in life. We all

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know this. I have one. I have an absolute guarantee that my 35-year-old daughter, Katie, and my 31-year-old son, Bob, will never, ever get behind the wheel of the car when they're drunk. They will never put a child in danger by putting them in the car with them because on May 28, 1980, when Katie was three and a half and Bobby was ten days old a drunk driver took everything from me. He took every opportunity for anything my children could ever do. But most of all, he took from me the ability to know how to answer the question, do you have kids? I either have to share details that I prefer not to share with strangers or deny that my children ever existed. But most of all I carry the responsibility for my children's death. I don't care how many times I hear, but Mary you were sober, you had your children in state-of-the-art car seats; you didn't do anything wrong. I live with the guilt because I was reaching back to put the pacifier in my son's mouth when I suddenly saw the car come over the hill so fast that it made my heart stop and I watched as my children's state-of-the-art car seats went through the back window of the car. And I live every day with that. But mostly, I live with the knowledge that nothing can ever bring them back; nothing will ever give me grandchildren; nothing will ever bring back the moment to change my mind to get in the car, but there's more to it than that. This was over 30 years ago, but what does that have to do with today? The laws have changed. Yes they have. The 17-year-old who took my kids got six months probation and I was told that I should have stayed home like my husband told me to and my children would still be alive. So there are tremendous changes in the laws. But we need more. How many of you would pick up a loaded weapon, remove the safety, go in and have a few drinks; what if the weapon went off? Would you consider yourself responsible for the death of innocent people or would you cry, it's not my fault. Every day in Nebraska people do exactly that. We all know the statistics of death and injury to our citizens from taking the safety off that lethal weapon. Some of you may not see the relationship between motor vehicles and weapons. Some of you may even wonder what safety I'm referring to. The common car key is the only safety on the deadly weapon that we refer to as the motor vehicle. When the safety is disabled by turning the key in the ignition, the driver is unable to engage the transmission without necessarily engaging common sense when there is already the possibility of impairment. Families are lost forever with this action and it's time to stand firm. The weapons of destruction are not toys. There is no right to drive, only a privilege which needs to be looked at as such. And those who fail to see that it is a privilege beforehand need a strong message afterwards. Having to install ignition interlock device after the first offense for drunk driving will be a deterrent to those who make bad choices and prevent the recidivism rate from climbing in our state. We have speed laws. People who drive a hundred miles an hour down the expressway get a more severe penalty than someone who jaywalks. There's a reason for that. There's also a reason for the passage of LB625. Please stop the death and destruction of our families and pass LB625. Thank you for your time.
[LB625]

SENATOR HADLEY: Thank you for taking the time to come and share your story with us. It's very much appreciated. Are there questions? Seeing none, thank you very much.

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[LB625]

MARY KOTAN: Thank you. [LB625]

SENATOR HADLEY: The next proponent. [LB625]

NICK PADEN: (Exhibit 13) Good afternoon, Vice Chairman Hadley and members of the committee. My name is Nick Paden, spelled N-i-c-k P-a-d-e-n and I'm here today as a registered lobbyist for Affordable Ignition Interlock. I've asked the committee clerk to pass out a letter. My client had a conflict this afternoon and was unable to be here as he is from Iowa and has been in this business for 23 years. Listening to the last testifier and being a new parent, I couldn't fathom the loss that people in this state have gone through. And it's a perfect segue to thank Senator Fulton and his staff and the committee and the committee staff for the hard work that you all have done in taking up this issue over the past few years and without repeating any more testimony that you've heard this afternoon, I just leave you with our support and our willingness to work on any issues that come forward from this point on. With that I would close my testimony. However, there was one more point I'd bring up. Senator Loudon, you asked this of Senator Fulton earlier, you had concerns or questions, I guess I should say, about costs. For my company, Affordable Ignition Interlock, and I'm not giving away any trade secrets, this came straight off the Web site actually, \$27.50 to install; \$65 a month, and \$22.50 removal fee. So if that gives you any type of assistance with the cost. Besides that I will leave it open and I will do my best to answer any questions if there are any, otherwise, again, I appreciate your willingness to take up this issue. [LB625]

SENATOR HADLEY: Thank you, Mr. Paden. Are there questions? Seeing none, thank you. [LB625]

NICK PADEN: Thank you. [LB625]

SENATOR HADLEY: (Exhibit 18--list of signatures) Are there further proponents? Seeing none. Is there any opponents to the bill? Anyone in the neutral capacity? Senator Fulton waives closing. That closes the hearing on LB625. And I see we've been joined by Senator Cook. As they say, come on down, we're going to do LB500. Senator Cook. [LB625]

SENATOR COOK: Greetings. [LB500]

SENATOR HADLEY: Is this your first time? [LB500]

SENATOR COOK: Yes. [LB500]

SENATOR HADLEY: Oh, we're very nice. [LB500]

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SENATOR COOK: My first time even in this hearing room for any reason, your honor. [LB500]

SENATOR HADLEY: Oh, we're probably going to rename it the Cook Hearing Room after we're done today. [LB500]

SENATOR COOK: I think so. (laugh) [LB500]

SENATOR HADLEY: If you would like to start, you certainly may. [LB500]

SENATOR COOK: (Exhibit 15) Thank you very much, Mr. Chair and members of the Transportation and Telecommunications Committee. My name is Tanya Cook, that's T-a-n-y-a C-o-o-k, I'm the state senator representing Legislative District 13 and I appear before you today as the introducer of LB500. LB500 changes obstruction or interference of the view of an operator of a motor vehicle from a Class V misdemeanor to a traffic infraction. The legislation also defines the obstruction or interference of the view of an operator of a motor vehicle as enforceable only as a secondary offense. Currently hanging a parking pass, an air freshener, or a rosary from your rear-view mirror is a Class V misdemeanor. The simple and common act of hanging an object from one's rear-view mirror does not rise to the level of a criminal violation and state law should be amended to reflect this. Other offenses currently categorized as Class V misdemeanors under Nebraska law include: fraudulent benefit claims; destroying the eggs of protected species; failure of the secretary of a school board to publish information; willful refusal of certain individuals to provide information to retirement boards as required by the school employer's retirement act; and individuals knowingly and intentionally accessing computer systems without authorization. This illuminates the need to amend the windshield obstruction to a citation. Maintaining current law to keep windshield obstruction as a misdemeanor negatively impacts those convicted of the violation and is a gross...and is in gross disproportion to the nature of the act. In instances like job applications and pursuing graduate school education, a young Nebraskan convicted under the current statute might be unjustly burdened by a criminal record. In addition to decriminalizing rear-view mirror obstruction, LB500 also makes the citation a secondary offense. This would mean that law enforcement could no longer stop and detain a person for an air freshener. Last year the Legislature held a debate about primary versus secondary offenses as they relate to texting while driving. A prolonged debate indicated that the majority of the members of this body believed that Nebraska statute should reflect this ideal that law enforcement should not be able to stop and detain a person for a vague and uncertain offense. Just as a person glancing at their handset is undeterminable as texting, it is uncertain that a rosary hanging from a rear-view mirror is an obstruction. Changing windshield obstruction to a secondary offense ensures a basic level of personal freedom and privacy while preserving law enforcement's ability to educate the public about the potential dangers of excessive obstruction. Finally, I'd like

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to address the potential use of the current statute as a vehicle for profiling and precursory stops by law enforcement. Professor Emeritus Samuel Walker of the University of Nebraska-Omaha submits a letter which should be coming around now in support of LB500 that outlines his academic analysis of the need for this legislation. In his letter he references a report done by the Omaha Public Safety Auditor that showed the use of the windshield obstruction statute as a pretext for stops. It was shown that these stops were disproportionately done to minority drivers. Doctor Walker is the author of 13 books and dozens of articles in prestigious publications. And Doctor Walker is perhaps the best known for his work on police accountability. His support of this bill is much appreciated and I distributed his letter in support of the bill. Thank you for your thoughtful consideration and I would ask for the advancement of LB500 to General File. [LB500]

SENATOR FISCHER: Thank you, Senator Cook. Are there questions? Senator Janssen. [LB500]

SENATOR JANSSEN: Thank you, Chairman Fischer. Welcome to the Transportation Committee, Senator Cook. So this...is this law brought mostly out of the concerns, and I'm reading the professor's letter, of racial profiling? And he, I think it is a he... [LB500]

SENATOR COOK: Yes, he is a he. [LB500]

SENATOR JANSSEN: ...talked about the auditor of Omaha, I guess, the police auditor said there was an issue with that. [LB500]

SENATOR COOK: Well that is one of the concerns for the bill. I actually first learned of it when we were having floor debate, for those of us who were here last year, on the texting while driving. And if I'm not incorrect, I believe it was Senator Fischer who highlighted the idea that some drivers, younger drivers, drivers of color, might be more likely to be stopped than a man, an older gentleman who would be...could be looking at his contacts or sending a text message or having a phone conversation. So it came to my attention, and I just thought that, absolutely, we want to ensure safety, but it just appeared to me that there could be opportunity to pull someone over who is law abiding and I don't know that our laws are really, in my opinion, they're not in place to do that. They're absolutely there to promote public health and safety, but not to harass law...otherwise law abiding citizens; especially since the majority of the body, as I recall, did not realize that having the air freshener or the rosary or the fuzzy dice was an infraction. [LB500]

SENATOR JANSSEN: I agree with you on that. I was asked about this bill on a radio program I did and I said that I had no idea that fuzzy dice were illegal. [LB500]

SENATOR COOK: Now you know. [LB500]

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SENATOR JANSSEN: Are you familiar with, and I wasn't until this year, but in 1992 we passed a law...formed a study and every year we...to make sure that racial profiling is not happening. [LB500]

SENATOR COOK: Um-hum. [LB500]

SENATOR JANSSEN: And there's been nothing that has come from that to indicate that the police officers have been profiling racially is that...and that seems to go counter to what I'm reading in the professor's findings here, so. [LB500]

SENATOR COOK: Absolutely. And my aide has a copy of some of the reports that Doctor Walker produced. I, as a policy advisor in Governor Johanns' office, also worked on some legislation related to racial profiling that requires a report that each of us receives every year. And while it is in part to address the potential of its use in that context, I have assurances from Omaha's police chief that it is another opportunity for the officer to educate the driver that may be speeding or swerving, texting perhaps, or exceeding the speed limit or not having their tags put on, which for me I'd better get out there and do that tonight, to offer them some written explanation of how it is an infraction. [LB500]

SENATOR JANSSEN: Thank you, Senator Cook. And I did the same thing, I just got my tags put on today as well, it is the 28th. [LB500]

SENATOR COOK: Okay, I need a screwdriver. [LB500]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Hadley. [LB500]

SENATOR HADLEY: Thank you, Senator Fischer. Senator Cook, thank you again for being here. Just help me a little bit on reading the bill that if something is required by the state it can be hung, is that...if I'm reading the law? [LB500]

SENATOR COOK: That's my understanding as well. For example, all of the state employees that have the parking hang tags and the handicap parking hang tags, those are lawful. It's just the air fresheners and...so it's a little bit ironic. [LB500]

SENATOR HADLEY: Well that's, I guess, my point too. But does a person...legally is a person supposed to take the handicap sticker off the windshield and put it down when they're driving and then put it up when they're parking? Because it doesn't make sense to me that we will allow a person to go 80 miles an hour down the interstate with that. [LB500]

SENATOR COOK: Right. [LB500]

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SENATOR HADLEY: And if they have a little air freshener we can pull them over. [LB500]

SENATOR COOK: Or a fuzzy dice. I have to admit I didn't do the research in-depth on the parking passes. [LB500]

SENATOR HADLEY: No, that's fine, maybe somebody knows. [LB500]

SENATOR COOK: I would be more than happy to do that and follow up with the committee. But I also found that somewhat ironic that your state tag was okay, but maybe not your tag for parking at Physicians Mutual or a tag you might use for your Benson Bunny teacher's parking lot or something like that. [LB500]

SENATOR HADLEY: Or your Kearney High (inaudible) or something. [LB500]

SENATOR COOK: Exactly. [LB500]

SENATOR HADLEY: Okay. Thank you, Senator Fischer. [LB500]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Louden. [LB500]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well welcome to the Transportation, Senator Cook. [LB500]

SENATOR COOK: Thank you. [LB500]

SENATOR LOUDEN: I'm wondering what your bill does then actually takes 60-6,256 and makes it a secondary offense, is that actually what it does? [LB500]

SENATOR COOK: That's one of the things that it does, yes. [LB500]

SENATOR LOUDEN: Okay. [LB500]

SENATOR COOK: And it also changes the penalty for that infraction. [LB500]

SENATOR LOUDEN: Yeah, it takes a point...if I have my little Yosemite Sam hanging there why it's going to take a point off my driver's license and cost me \$50. [LB500]

SENATOR COOK: Yes. Yes, sir. [LB500]

SENATOR LOUDEN: But it will be a secondary offense. [LB500]

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SENATOR COOK: They cannot pull you over for Yosemite Sam. They can pull you over for weaving, you would never do this. [LB500]

SENATOR LOUDEN: Yeah, secondary. [LB500]

SENATOR COOK: But they could pull you over for exceeding the speed limit, perhaps. [LB500]

SENATOR LOUDEN: Secondary offense. [LB500]

SENATOR COOK: Yes, sir. And then get you something and say, oh, Yosemite Sam is there and go from there. [LB500]

SENATOR LOUDEN: But at the present time if I got my Yosemite Sam hanging there, why it's a primary offense. They can pull me over for that. [LB500]

SENATOR COOK: Yes, sir. [LB500]

SENATOR LOUDEN: Yeah. Is this a good idea then to have this bill? [LB500]

SENATOR COOK: Well I think that you are probably a hardworking, law-abiding citizen and you did not intend...you didn't leave your house that day meaning to be a menace to society with your Yosemite Sam hanging there. So why should you get pulled over for just the Yosemite Sam? If you're exceeding the speed limit, don't have your tags, other things that might really be dangerous to another driver, in my opinion, I don't think you should get pulled over just for Yosemite Sam. If you're speeding and you got Yosemite Sam, you maybe should get the speeding ticket and then a warning on Yosemite Sam. That's... [LB500]

SENATOR LOUDEN: Okay. But the first intersection I pull up to with him hanging there, why it could cause me a problem. [LB500]

SENATOR COOK: Right now it could if the law enforcement officer so chose to make it a problem that day. [LB500]

SENATOR LOUDEN: Okay. Okay. Thank you. [LB500]

SENATOR FISCHER: Thank you, Senator Louden. Senator Price. [LB500]

SENATOR PRICE: Thank you, Senator Fischer. Senator Cook, as I look at this and I look at it and it says unlawful obstruction or interference of the view of an operator; what about the sun visor? We're allowed to put that down. That would tell you from me if I sit

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tall in a car...if the passenger sun visor is down, if someone is doing makeup or whatever, I don't see the right side of the road. So we don't allow it to be down. I almost take it out of the cars I drive because it is a concern, but this says obstruction, not just the rear-view mirror hanging "hangiedangies" on there. This is obstruction of view. So now we would be making a point down on...if you pull over and you're a little lippy, you could end up getting an infraction for having your visor down. [LB500]

SENATOR COOK: According to the way it reads now, I would say yes. [LB500]

SENATOR PRICE: You could be pulled over, but you wouldn't get a point off your...there's a penalty phase, and I'll talk about... [LB500]

SENATOR COOK: Okay, you're in the penalty phase. [LB500]

SENATOR PRICE: ...you have a penalty for my...for somebody having a visor down...problematic. [LB500]

SENATOR COOK: Thank you. I would agree. [LB500]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator. [LB500]

SENATOR COOK: Thank you. [LB500]

SENATOR FISCHER: Could I have a show of hands of how many people are going to testify on this bill? One, two. Okay, thank you very much. Proponents please. Good afternoon and welcome. [LB500]

ALAN PETERSON: (Exhibit 16) Thank you, Chairman Fischer, and members of the Transportation and Telecommunications Committee. I'm Alan Peterson and my family we spell it A-l-a-n and P-e-t-e-r-s-o-n. I am an attorney; sometimes a volunteer attorney, but also a registered representative of the ACLU-Nebraska and I appear here to support this bill that's been prepared and introduced by Senator Cook and thank her for doing so. I think it might be a good idea to start by clarifying the question that came up from Senator Price and others about what does this obstante do, this obstruction business. And if you look in LB500 on the...the next to the last page, there is, I think, an answer to the problem of what about the rear...the visors and what about Yosemite Sam or other items. The bill in Section 2 which is amending part of the existing statute will show you on that page that it...the obstruction law does not apply to any required or permitted equipment of the vehicle itself. So I think that probably takes care of the visor. Yosemite Sam is in trouble though. It is interesting; this law does not really say how much obstruction becomes a problem. I note it also applies to the rear view. It says anything that obstructs the full and clear view behind you. And perfectly legitimate safety reasons for avoiding such obstruction of the view. There's no doubt about that. And, you know, I

want to make clear, this bill provides for an adjustment of the law, not throwing it out or even making a huge change in it. But...and I want to testify about profiling without going absolute on that either. But let's talk about that just a little bit. Only reason the ACLU would want to take a position on this bill is because of concern about equal protection of people, how they're treated when they're driving or walking around. And that's protected under the 14th Amendment to the U.S. Constitution. It's sort of what we do with the ACLU is watch out that the government doesn't overreach. And that applies to the question of treating everybody equally. The concern with regard to profiling is justified because nationwide, and to some extent in Nebraska, there are not only some documented instances of profiling that have taken place and have been reported on in the police auditor's report, as well as to some degree in the state's own crime commission report. It's not just that some have happened, and it's fairly few, but there is a huge problem of perception. The minority community in our largest communities in this state do have the perception that they're not treated the same by law enforcement, right or wrong. And when they raise that point, they frequently...they point to being pulled over on pretexts. I think, frankly, the Omaha police department and the Lincoln police department are doing a terrific job and the state itself in studying this issue. But the perception remains to some extent. And the problem is with statutes and traffic violations that are what you can call subjective or arguable or vague. For example, in this one we don't have what a lot of states have, a requirement that anything regarded as an obstruction be at least seven square inches in size on the front windshield, otherwise it doesn't count or it's not considered material. I looked at the case law across the country on this question of the pretext resulting in profiling or what people think is profiling and around the country when the objection is made, hey, I got pulled over; I got arrested and the officer said, well, I pulled you over because you have a crack in your windshield or you have a sticker on there or you have...used to be fuzzy dice when I was growing up, but I don't see those anymore, but the problem has been where that was the only reason for the arrest and the stop. Largely, those cases have been held in the favor of the arrested person. In other words, it does seem strange that a police officer would stop a car and stop a driver on that item alone. They saw an air freshener or whatever hanging down. There are some cases like that. Most of the cases, however, go the other way because the police officer is almost always able to find some more serious violation and in those cases it's not considered a profiling deal. The grounds for the stop and the arrest or even the search are adequate or reasonable. The problem we've got in Nebraska that Senator Cook's bill addresses is we have one of the vaguest of these statutes that I've seen in looking through them. And while I still think it's a legitimate statute, I think reducing it to an infraction is a good idea. But I think the most important part of this bill is to say that it is a secondary violation. You can't be stopped just for that. If you're stopped just as a seat belt violation, just as a texting on the telephone violation, I noticed also it covers violation of your learner's permit restrictions, those are all secondary violations. You can't be stopped just for that. But if the officer having stopped you for another good reason finds those to be deficient, you can get an infraction for them and you can lose a point on the license which might be important.

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So, again, this is a moderate bill. It attempts to solve something that may be as much an apparent or perceived problem among the minority community as it is a real problem. But it's there. You'll notice in the testimony or the summary letter that I handed out, my letter I quoted Lincoln's Chief Casady who said, basically, that you must have been somewhere lying beneath a truck for the last several years if you don't perceive that there is some lack of trust between the minority community, particularly the African-American community, and law enforcement in our state. And Chief Casady, Chief Hayes in Omaha, they know that and they work on it. And they're to be applauded for it. This is a moderate change. It makes some sense; reducing the crime of an obstruction down to an infraction would seem to be pretty sensible and calling it a secondary offense will remove even that perception that, oh, you stopped me on a ridiculous charge so you could get at me it's because you saw what color I was, or you saw that I was dressed in such and such a way. You know what I'm getting at. Let's get rid of the perception. This is a modest change and a moderate change and a good change so we support LB500. Thank you. [LB500]

SENATOR FISCHER: Thank you, Mr. Peterson. Do you think it would be helpful to include something in this bill about the size of the obstruction since you said Nebraska really doesn't have anything like that as compared with other states? [LB500]

ALAN PETERSON: You know, it might not be a bad idea to modify the language. The word "material" was stuck in in some of the states. The obstruction of the front windshield must be material. And some of them go so far, as I said, to say seven square inches. You know, it reminds me...you drive in Lincoln or anywhere, lots of people have their university decals across the rear windshield. I don't know if they're seven square inches or not. But technically that could be found to be an obstruction of the so-called clear and unobstructed view behind you that's talked about. You know, that might makes some sense. [LB500]

SENATOR FISCHER: I just...after listening to you and also Senator Cook, it just seems like maybe we have a...something we need to clarify somehow. [LB500]

ALAN PETERSON: The legal term is loosey-goosey. [LB500]

SENATOR FISCHER: Yeah. [LB500]

ALAN PETERSON: It's a little loose as it is. [LB500]

SENATOR FISCHER: Okay. [LB500]

ALAN PETERSON: I don't know that it's a big prob...reduced to an infraction however. [LB500]

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SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much for coming in today. [LB500]

ALAN PETERSON: Thank you, Senator. [LB500]

SENATOR FISCHER: Are there other proponents for the bill? Other proponents? Are there opponents to the bill? Good afternoon. [LB500]

DAVID BAKER: Good afternoon, Senator Fischer. Thank you for allowing me to address the committee today. My name is David Baker, D-a-v-i-d B-a-k-e-r. I'm appearing today on behalf of the Omaha Police Department, Chief Alex Hayes who can't be here. We're appearing in opposition of LB500 in part. I think it is important to look at the reasons behind the bill. I understand Senator Cook's concerns. Chief Hayes and I share a lot of those concerns. I would say first off, the first part of the bill, there's two parts to this bill, obviously. The first is making a misdemeanor and amending it to be an infraction. And on that point we do support this bill. We think that is important. It's clear that a misdemeanor is a little beyond what the intent or the need is in this case and in that case we do support LB500. The Omaha police department is concerned though that reclassifying an obstructed vision offense is a secondary offense infraction will defeat the purpose of the law and that is the safe operation of a motor vehicle in order to prevent an accident. As a secondary offense, the infraction can be written after an accident that's after the danger has already occurred. There is a reason for this law and I'm not going to say that that hasn't been debated in terms of size or how significant the obstruction is. And there have been some pretty good suggestions made here just in the last few minutes in terms of size of the object and things of that nature. I don't want to get police officers into the practice of trying to estimate seven inches versus five and a half in a moving vehicle or anything like that. I think what we need to do is look at what the intent of the law was. And what the intent of the law initially was, I believe, was to allow for safe operation of motor vehicle around other vehicles and pedestrians, school zones, things of this nature, where you need to be able to see clearly out of the windshield. And perhaps instead of making it a secondary infraction in this case, we might look at wording such as significantly obstructed; if the driver's vision was significantly obstructed. This allows a police officer to see somebody who is driving with a significant obstruction in their way that prohibits them from driving the vehicle safely. Maybe they made a lane change or something of that nature, as was brought up by the last testimony there. It also refers to the rear view so maybe somebody made a lane change, their vision was blocked to the rear of the car as well. This allows the officer to go ahead and address that as a primary offense and at the same time address some of the concerns raised today. In terms of whether or not an officer is using a pretext stop, stopping a vehicle for what it shouldn't be stopped for. If an officer was truly corrupt and intent on stopping a vehicle for an offense that actually wasn't there, there are a lot of other things that can be used out there too instead of just this type of thing. And we're not going to change that by this law today. The way we're going to change that is proper

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oversight; is proper review of police procedures; and properly enforcing the law and holding ourselves to high standards, high professional standards. Chief Hayes is absolutely dedicated to that, his command staff is as well. We believe that this bill is modified to a first...left at a first offense as an infraction with "significantly obstructed" being the wording for the vision that would be the best outcome both in terms of safety and addressing the concerns of the community. And with that, I'll be happy to take any questions. [LB500]

SENATOR FISCHER: Thank you, Mr. Baker. Can you tell me how many vehicles have been pulled over for having their view obstructed? [LB500]

DAVID BAKER: No, I really cannot. [LB500]

SENATOR FISCHER: Do you keep track of that? [LB500]

DAVID BAKER: Well I could get that information for you, but no, I do not have that information for you and it would depend on the time frame. [LB500]

SENATOR FISCHER: If, you know, if you could get us that information, maybe over the last three years. [LB500]

DAVID BAKER: I'll see if that's available. [LB500]

SENATOR FISCHER: As being the primary reason a vehicle was pulled over. [LB500]

DAVID BAKER: There will be absolutely no way to know if it's primary. [LB500]

SENATOR FISCHER: Okay, well just...if it's included then in the...when you write up the ticket. [LB500]

DAVID BAKER: If it was cited. [LB500]

SENATOR FISCHER: Okay. [LB500]

DAVID BAKER: And in fact, we won't know how many were pulled over unless it was cited. I can give you the number of citations for that as an offense. [LB500]

SENATOR FISCHER: Okay. [LB500]

DAVID BAKER: But what I will not be able to do is tell you how many vehicles were pulled over for that or for that matter if a warning ticket was given because warning tickets aren't tracked the same way. Now Chief Hayes and the command staff, the police department has instituted a new courtesy citation that allows us to address

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something that, uniquely enough, Omaha hasn't been able to address before and that is the courtesy citation for moving violations. And this is one of the areas that we talked about specifically when we talked about those types of moving violations. There are a lot of things that don't warrant a ticket, but we can document them this way, we can educate the public, and I think we're much better off with a educated public than we are with a disciplined or punished public on something of this nature. [LB500]

SENATOR FISCHER: Okay. Can you tell me if the word "significantly" is that a term that is used elsewhere in statute that you and your officers use daily? You're suggesting that we use the term "significantly obstructed" so I'm wondering if that is... [LB500]

DAVID BAKER: Be like a significantly impaired. If you're significantly... [LB500]

SENATOR FISCHER: So you do use it in other cases. [LB500]

DAVID BAKER: We do use it in other things. I think it's fairly straight forward. And significantly...if it were significantly impaired it would do something to...in some way, substantial way inhibit my ability to perceive what's on the other side of the object whatever it may be. And unfortunately, if we go to... [LB500]

SENATOR FISCHER: Oh, I...excuse me, I was thinking when you said significantly impaired I was referring to previous testimony we had on other bills today. [LB500]

DAVID BAKER: Right. [LB500]

SENATOR FISCHER: Is that what you're using it for too? [LB500]

DAVID BAKER: I'm using it like we would there. [LB500]

SENATOR FISCHER: Okay. [LB500]

DAVID BAKER: In other words, what we'd be looking at is a rosary which is one of the things talked about. [LB500]

SENATOR FISCHER: No, no, I don't want you to use it in this case. I want to know where you use it in other cases. [LB500]

DAVID BAKER: In intoxicating cases, that's one of the cases. [LB500]

SENATOR FISCHER: Okay. Okay. Thank you. Okay. Senator Hadley. [LB500]

SENATOR HADLEY: Senator Fischer, thank you. Just a quick question. Earlier I asked about a handicap sticker. [LB500]

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DAVID BAKER: Yes. Placard. [LB500]

SENATOR HADLEY: Or hanging from a mirror placard...hanging...that would be legal. [LB500]

DAVID BAKER: No, sir. [LB500]

SENATOR HADLEY: It is not legal, is that correct? [LB500]

DAVID BAKER: No, you're supposed to take that down when you drive, when you move the motor vehicle. [LB500]

SENATOR HADLEY: That's what I thought. Okay. [LB500]

SENATOR FISCHER: Senator Janssen. [LB500]

SENATOR JANSSEN: Thank you, Chairman Fischer. I apologize, I missed your name when you introduced yourself. [LB500]

DAVID BAKER: David Baker. [LB500]

SENATOR JANSSEN: Thank you for being here. Quick question, have you ever had some Omaha police department, is that who you're representing today? [LB500]

DAVID BAKER: Yes. [LB500]

SENATOR JANSSEN: Have you had complaints brought against officers for this specific...for pulling somebody over for something on their mirror? [LB500]

DAVID BAKER: Yes, we have. [LB500]

SENATOR JANSSEN: For racial profiling. [LB500]

DAVID BAKER: Yes we have. [LB500]

SENATOR JANSSEN: So that has happened. How is that person dealt with in...that person being the arresting officer? [LB500]

DAVID BAKER: If the arresting officer...if an issue is found with...the arresting officer can be disciplined. If the arresting officer...depends on the outcome of the investigation. We have to be careful when we look at these types of things, remember that an allegation is not necessarily a fact, and we have to do an investigation on this; we have

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to review these types of things and a mere allegation is not necessarily going to result in anything if it can't be proven beyond just the allegation. However I would say this, I have no doubt that Senator Cook's testimony in this regard is substantially correct, that this has been an issue in the past and that we've worked to minimize this issue, both Chief Hayes and I have. In the last several years I think you'll find that it is much less. But to sit here and tell you, not so much racial profiling, now I make that...but what I say is, as writing an air freshener or something like that, we've discouraged that actively and we continue to do that. [LB500]

SENATOR JANSSEN: Thank you. [LB500]

SENATOR FISCHER: Other questions? Senator Louden. [LB500]

SENATOR LOUDEN: Thank you, Senator Fischer. If this bill happened to pass like that and made it a secondary offense, would there be a big influx of all kinds of...you remember years ago, my god, there was dice and there was everything in the world hung from there. Some people were moving around in order to look down the windshield. Would there be a big influx of hanging those things back in there again, because unless you...you could drive for half your life and never get stopped for it, you know? [LB500]

DAVID BAKER: That's very true. And it is possible; it is difficult to predict what would happen in that hypothetical situation. However, I think the main thing is that we can't predict what kind of fads may come back. In fact, I've, as a joke, purchased fuzzy dice for people before. To the best of my knowledge, they haven't hung them on the mirrors, but they still sell them in the stores throughout the state. And for that reason, I...you know, it's difficult to say what could happen in the future, but the truth of the matter is, if this is a secondary offense, it will be like the seat belts where we don't have the same compliance that states that have it as a primary offense seat belt type of an issue. And what I'm most concerned about, I worked four years as an accident investigator and then another four years as an accident investigation sergeant; I've seen what these cars do. I see what they do to pedestrians and I am genuinely concerned that we need to have something, if not this bill, then if we go ahead and pass this one intact, we need to have something that we can replace it with that will help protect people, help guide drivers so they don't drive with obstructed vision, things on their dashboard, things hanging from their mirror that are significant enough obstructions that they get into accidents, hurt and kill people. [LB500]

SENATOR LOUDEN: Well I agree education because years ago we had these tigers that sat in the backseat, you know, and bobbed their heads and they weighed about a pound and a half and when we were told that when those things came...when you were in a collision they came through at 50 miles an hour, why it would kill you dead, you know, so you don't see those any more and you don't see the things sitting on the

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dashboards any more and I'm wondering, you know, if by having it as a secondary offense if we would see an influx of some of those things again. The other thing is when we talk about rear view...full view on the road behind, now that can...if you have rear-view mirrors, why that...you can have stickers, I guess, in your back window as long as you have rear-view mirrors, because you could have a pickup with a load on it and you're still relying on your rear-view mirrors. But you have to have one or the other or both, is that mostly correct nowadays? [LB500]

DAVID BAKER: That's correct, yes. And the stickers can provide a problem to the rear as well. And we see...we don't need to go just with the college stickers, I mean we see the big Kansas...I'm not picking on Kansas State that much, but we see the big Kansas State Wildcat a lot around in Omaha. We see that and other large stickers on the back of cars and things like this that they cause issues, a vision to the rear as well. And I think making this a secondary type of an offense is not likely to make that go away as quickly. It's probably going to increase it over the long term, yes. [LB500]

SENATOR LOUDEN: Okay. Thank you. [LB500]

SENATOR FISCHER: Other questions? Would you happen to know what other states do in this regard? [LB500]

DAVID BAKER: No I would not, I'm sorry. [LB500]

SENATOR FISCHER: Maybe I could ask Senator Cook's LA to look into that for us. [LB500]

DAVID BAKER: I'm sure other states have some sort of obstructed vision law. And as a previous witness or testifier had said, that there are other states, obviously, that do have this type of thing and some of them do it in square inches and whatnot. [LB500]

SENATOR FISCHER: But don't you see a... [LB500]

DAVID BAKER: I would just caution us away from square inches because that's way too much to be...what's the difference between a six to eight square inch or whatever. [LB500]

SENATOR FISCHER: I would have a problem with a size, like you said, with a moving vehicle that that really isn't fair to your officers nor to the person driving that vehicle, I wouldn't think. [LB500]

DAVID BAKER: I would agree. [LB500]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in

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today. [LB500]

DAVID BAKER: Thank you. [LB500]

SENATOR FISCHER: (Exhibit 14) Any other opponents to the bill? Any opponents? Anyone in the neutral capacity? Senator Cook, would you like to close? And I didn't get to officially welcome you. [LB500]

SENATOR COOK: No. [LB500]

SENATOR FISCHER: This is your first time... [LB500]

SENATOR COOK: Yes it is. [LB500]

SENATOR FISCHER: ...before the committee and we are so pleased you're here at the end of the day. [LB500]

SENATOR COOK: Yes. [LB500]

SENATOR FISCHER: So thank you. [LB500]

SENATOR COOK: So I will wrap it up in an efficient manner. Thank you, again, for listening to the testimony of LB500. I think you've heard several arguments in support of advancing the bill. Perhaps we will absolutely follow up with you with some research regarding peer states on this issue. But to follow up on some things that have emerged during the hearing. Senator Price, I believe you asked a question regarding your sun visor. And the way the statute reads right now this...from having a clear view any sticker or identification authorized or required by the federal government or any agency thereof or the state of Nebraska or any political division thereof may be placed upon the windshield without violating the provisions of this section. Any person violating the provisions of this section shall be guilty of a Class V misdemeanor. The part that I meant to read was the part that...if it's attached to the car it is also not considered obstructed. Okay, so that got clarified. Also, due to the wonders of closed-circuit television we have some input from the Department of Motor Vehicles, legal counsel, I believe, and she has stated that both the handicapped and the state parking tags are technically illegal. And the state tag for state employees parking in the state parking lots state "remove before driving." And once again, it's not...we've talked a lot about racial profiling or young people profiling or Yosemite Sam fan profiling, but this is a statewide policy we're looking to put into place. I think...as I talk to people casually and anecdotally in the interim, they don't understand that it is unlawful even for...I use the example of my parent's handicap van, not only have I been parking it a little bit unlawfully, but apparently I'm supposed to not conduct the automobile with the tags. So again as a law abiding citizen signing up to create a state policy that is enforceable,

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certainly not wanting in any way to provide an obstruction for law enforcement in Omaha or across the state to be able to pull people over who may have some other things that they're into, let's just say, I think this is a good policy to minimally move it from a misdemeanor to an infraction and maintain the opportunity to continue to educate the public on moving violations. So, thank you very much for your consideration. [LB500]

SENATOR FISCHER: Thank you, Senator Cook. And with that I will close the hearing on LB500 and close the hearings for the day. Thank you very much. [LB500]