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Judiciary Committee
February 08, 2013

[LB44 LB202 LB318 LB369]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 8, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB202, LB369, LB44, and LB318. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senator absent: Al Davis.

SENATOR ASHFORD: Welcome to the Judiciary Committee. Let me tell you, those of you who have not been here before, we would ask that you follow our little light system that we have that will tell you with the flashing of a yellow light that we'd ask you to sum up your comments. We would like you to keep your...and there are a couple bills here today that are...all the bills are very important. There are a couple that...or at least one, I know, that has some expert testimony involved, so we're going to extend the time to four minutes from our normal three minutes. But we would ask everyone to confine your comments to that time frame. The first bill is LB202, change provisions relating to DNA collection. Senator Coash. [LB202]

SENATOR COASH: Thank you, Chairman Ashford, fellow members of the Judiciary. My name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent District 27 right here in Lincoln, here today to introduce LB202. Before I go into the changes that this bill makes, I'll give you a little background on DNA collection. We currently have a DNA Identification Information Act. Nebraska statute requires that all convicted felons submit a DNA sample and a fingerprint for collection in the State DNA Sample Bank. The cost is \$25 and must be paid by the felon. Currently, the sample may be submitted in one of two ways: a blood draw, or a buccal cell sample, also known as a cheek swab. In recent years, the Nebraska State Patrol has seen a great decrease in the amount of people opting for a blood draw over the more popular cheek swab. However, since the NSP must present blood drawing as an option for state statute, they must maintain not only costly blood-sampling kits but also personnel who are either physicians, nurses, or people trained in the drawing of blood in order to collect the sample. So what this bill does is it removes blood as an option to collect that DNA sample. And what that will do is (a) the State Patrol won't have to carry the expense of buying those blood-draw kits, putting them on the shelf, having them expire without anybody using them. In addition, we won't have to keep...anybody can be trained to do a cheek swab, while you have to have some special medical training in order to draw blood via a needle. So that's the first change. The second change that LB202 does, it will bring some efficiency to the DNA collection by requiring that the State Patrol only obtain DNA samples from cells and not from blood. This would allow...okay, sorry, I went through all that. The current statutory civil immunity for such a staff person would remain in place for this bill. That is just as currently the case the person administering the test would not be criminally liable for harm, provided he or she was acting in good faith and in a reasonable manner and in accordance with the kit's instructions. The second change is this: LB202 brings

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efficiency to the funding of the DNA collection costs. It creates the Nebraska State Patrol DNA Cash Fund which allows for the \$25 fee to be submitted directly for the specific purposes of funding the Nebraska State Patrol's DNA collection. Currently, the \$25 goes into the State DNA Sample and Data Base Fund which is held by the Attorney General. LB202 would create a separate cash fund and that \$25 would go into that and not through the Attorney General's fund. It doesn't erase the Attorney General's fund; it creates a new one, because the Attorney General does use that fund for other purposes. It would create an accounting shift as to where the money is deposited. Currently, when the money goes into the DNA Sample and Data Base Fund and the State Patrol buys DNA kits, the money comes from that account. With LB202 and the creation of the new DNA Cash Fund, it would streamline the process taking the Attorney General out of the mix and may be a little bit more efficient in that manner. So with that I will close and answer any questions. [LB202]

SENATOR ASHFORD: Any questions of Senator Coash? Senator Chambers. [LB202]

SENATOR CHAMBERS: Senator Coash, I support what you're doing with your bill and I think it is efficient. It probably should have been handled this way at the time that a collection of a fee was required. However, I have to bring you some bad news. Your bill makes it possible for me to attack a horrendously bad bill that was enacted last year, or two years after I left the Legislature, which they never could have gotten during my absence, where they compel a person, who against his or her will and for no reason that I can see that's justified, pay for a mandated DNA sample. Then it says that if a person doesn't give such a sample, he or she, after finishing his or her sentence, shall not be released unless and until a DNA sample has been collected. When a sentence is handed down, after you have served that sentence, there is no power for the state to hold you beyond that point. And if they continue to hold you, they're holding you contrary to what the law required as a punishment for what you did. So I'm going to use your bill to try to eradicate that. I just want you to not be blindsided. But as far as what you're doing with the thrust of your bill, I have no problem with it. And in order for me to do what I'm doing, I will have to introduce a section of statute that your bill does not deal with, so I won't be eliminating anything from your bill. And even if I'm successful in removing the continued collection of this atrocious bit of extortion by the state, who is supposed to respect the law, the money that currently is being held by the Attorney General would be transferred to the State Patrol Cash Fund. And just as an off the cuff, and you'll hear it because I don't have cuffs, I don't blame them for not trusting the Attorney General to handle their money. [LB202]

SENATOR COASH: Well, Senator Chambers, the State Patrol felt it would be more efficient if they could keep all of their accounting in-house and I thought that was an appropriate thing and that's why I included it in this bill. To your point, Senator Chambers, about the collection of that fee--and the State Patrol is going to follow me--it was my understanding that many, many of the individuals who should be paying this

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under the law, currently do not, and they do not go after them for that money, so.
[LB202]

SENATOR CHAMBERS: The current statute says, and I happen to have a copy of it, "shall at his or her own expense have a DNA sample collected." And I'm sure a nonlawyer or a nonthinker brought this, and on the Judiciary Committee at least five nonthinkers advanced it to the floor and at least 25 nonthinkers who have no respect for the law or the humanity of citizens of this country enacted it into law, and a Governor who simply follows what the Legislature gives him unless it's something he wants--in the same way that little jackals follow tigers and eat their leavings because they're too small with their little sharp teeth to bring down prey of their own--signed it into law. So it becomes my job to be the garbage man, the cleanup man, and try to do damage control based on what happened in my absence. But since I came here voluntarily, I have nobody to blame but myself. I'm not whining. But I want to tip you off since it's your bill of what I intend to try to do. [LB202]

SENATOR COASH: Thank you, Senator Chambers. [LB202]

SENATOR CHAMBERS: Okay. [LB202]

SENATOR ASHFORD: Thank you, Senator Coash. I believe there are no other questions. The Colonel is next. How many testifiers do we have on this particular bill after the Colonel here? All right. [LB202]

DAVID SANKEY: (Exhibit 1) Chairman Ashford and members of the Judiciary Committee, my name is David Sankey, D-a-v-i-d S-a-n-k-e-y, and I have the pleasure of serving as the superintendent of the Nebraska State Patrol. I appear before you today in support of LB202. I'd like to express our appreciation to Senator Coash and his staff for their work in sponsoring this bill. One of the State Patrol's responsibilities is to administer the State DNA Data Base which serves as the repository for samples collected under the DNA Identification Information Act in Chapter 29, Article 41. The purpose of this bill is to enhance efficiencies in the collection and testing of DNA samples by requiring samples to be collected by buccal swab and to address an absence of statutory guidance for use of funds collected as a result of this act by executing an accounting shift and authorizing a Nebraska State Patrol DNA Cash Fund. Currently, under 29-4106.01, a person required to submit a DNA sample shall be given the choice of having the sample collected by a blood draw or a buccal cell collection kit. Samples collected by a blood draw involve a puncture of a vein and must be drawn by a physician, a registered nurse, or persons trained to withdraw human blood as statutorily required in 29-4107(1). A buccal swab is easy to use, less intrusive to the individual, and can be collected by nonmedical personnel or the person themselves. The use of buccal swabs has become routine and collection by blood has continued to drop. Of the 4,053 samples collected in 2012, only three were collected utilizing blood, which is .07

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percent. This was a decrease from 2011 when it was utilized .18 percent of the time for the 4,346 samples collected. LB202 would eliminate blood samples and require the use of buccal cell collection, thus realizing the benefits already stated, as well as eliminating the need for blood kits and the auxiliary items needed to support blood samples such as testing reagents, consumables, and maintenance of personnel proficient in the skills necessary to ensure accurate testing. Additionally, LB202 creates the Nebraska State Patrol DNA Cash Fund to provide an account for monies collected under the DNA Identification Information Act in accordance with Nebraska law for costs incurred for the collection, testing, and storage of DNA samples. Currently, the \$25 is sent to the State DNA Sample and Data Base Fund which is administered by the Attorney General, but is utilized by the State Patrol to purchase and provide collection kits to the collecting agencies. LB202 provides a mechanism to account for the funds and remove the Attorney General's Office, thus streamlining the process. The State Patrol supports LB202 and encourages you to advance the bill to General File. Thank you for your consideration and the opportunity to present this information today. I would be happy to answers any questions that you might have. [LB202]

SENATOR ASHFORD: Any questions of Colonel Sankey? Thanks, Colonel. [LB202]

DAVID SANKEY: Thank you, Senators. [LB202]

SENATOR ASHFORD: Colby, do you...are there any other testifiers on this bill? Senator Coash. [LB202]

SENATOR COASH: I'll waive closing. We do have a... [LB202]

SENATOR ASHFORD: Senator Coash waives closing. Senator Lathrop. [LB202]

SENATOR COASH: We do have a letter, Senator Chambers... [LB202]

SENATOR ASHFORD: Okay, go ahead. No. [LB202]

SENATOR COASH: (Exhibit 2) Or we do have a letter too, for the record. [LB202]

SENATOR ASHFORD: Okay. Is this the...? [LB202]

SENATOR LATHROP: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm here today to introduce LB369. I am the state senator from District 12 in Douglas County. The Nebraska Association of Behavioral Health Organizations asked me to introduce LB369 due to their concerns about oversight deficiencies in programs that deliver treatment services under the Probation and Parole Programs Cash Funds. LB369 requires that mental health, behavioral health, or substance abuse treatment services provided to probationers or

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parolees needs to be provided by service providers that are (1) licensed pursuant to the Uniform Credentialing Act, (2) audited by the Division of Behavioral Health or by a regional behavioral health authority, (3) accredited by the national accrediting entity with respect to the services provided, and (4) annually audited and provide an independent financial audit for review to the Parole and Probation Administrators. I understand there are providers and state agencies here today who have concerns about the impact of this bill. It is my hope the two sides of this issue will be able to work together to develop a plan that provides adequate oversight while assuring access to quality treatment for offenders across the state. Testifying after me is John Synowiecki. I'm confident that he will further explain the reasons behind the bill and will be able to answer any questions you may have regarding LB369. Thank you. [LB369]

SENATOR ASHFORD: Any questions of Senator...yes, Senator Chambers. [LB369]

SENATOR CHAMBERS: Senator Lathrop, I'm learning how to be very observant on this committee. [LB369]

SENATOR LATHROP: Okay. [LB369]

SENATOR CHAMBERS: I noticed that you began your testimony, then you came over and you picked up your book. [LB369]

SENATOR LATHROP: Yes, I did. [LB369]

SENATOR CHAMBERS: And you didn't say what district you represent or who you are until you got your book. Did you need the book to remind you of that or are you just...? That's all I have. [LB369]

SENATOR LATHROP: Really? I'm learning a lot about you too. Thanks, Senator. [LB369]

SENATOR ASHFORD: Thank you, Senator Lathrop. Did you say Mr. Synowiecki was here? [LB369]

SENATOR LATHROP: Synowiecki is here. [LB369]

SENATOR ASHFORD: Where is he? [LB369]

SENATOR CHAMBERS: John? [LB369]

SENATOR ASHFORD: Where is he? [LB369]

SENATOR LATHROP: Why don't I look in the hall? I saw him here... [LB369]

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SENATOR ASHFORD: Yeah, because normally...I mean, this is not unexpected that John's not in the room. [LB369]

SENATOR CHAMBERS: John Synowiecki? Is the Colonel still in the room? [LB369]

JOHN SYNOWIECKI: I apologize. I didn't know we were up. [LB369]

SENATOR ASHFORD: John, welcome. [LB369]

JOHN SYNOWIECKI: Chairman Ashford. [LB369]

SENATOR ASHFORD: Yes, John. Welcome back. [LB369]

JOHN SYNOWIECKI: Thank you. Even though I was never on this committee though, but I appreciate the welcome. [LB369]

SENATOR ASHFORD: No. [LB369]

JOHN SYNOWIECKI: I apologize. I did not know we were up. I was across the hallway. [LB369]

SENATOR ASHFORD: We won't...yeah. [LB369]

JOHN SYNOWIECKI: (Exhibit 3) Chairman Ashford, members of the committee, my name is John Synowiecki. It's J-o-h-n S-y-n-o-w-i-e-c-k-i. I am testifying in support of LB369 on behalf of the Nebraska Association of Behavioral Health Organizations, otherwise known as NABHO. We exist to actively promote sound, responsive, efficient, and effective substance abuse and mental health services for the people of Nebraska. Collectively, our 45 member organizations serve over 29,000 Nebraskans annually while working diligently to create a responsible network of system services throughout Nebraska. And we thank Senator Lathrop for introducing this initiative. First, you know, I want to be clear, we do affirm and support the behavioral health treatment activities that are promoted under the Probation and Parole Cash Funds. Working collaboratively with state probation and parole officers, our member organizations are providing accredited level services to individuals in demonstrated need, and these resources have served to develop a specialized track of behavioral healthcare that recognizes the unique needs of this client population with a specialized standardized model of care. The offender fee resources within the Probation and Parole Cash Funds supports a voucher system approach to accessing services for offenders. We recognize that there are distinct attributes and advantages of a voucher approach which enhances access and empowers consumer choice. While there are indeed very favorable characteristics of a voucher program, there is a uniquely important aspect to this approach that

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necessitates consistent oversight that promotes proper uniform quality and fiscal controls. I think it is important to note that as accredited providers we participate in a wide range of compliance requirements. These are welcomed activities that help to ensure that behavioral health consumers are receiving an appropriate amount of care consistent with the monetary reimbursement received from funders. In the case of my particular agency, Catholic Charities of Omaha, we are continually involved in formal site visits and service audits from a variety of our funders, including: Federal Bureau of Prisons, federal Probation and Pretrial Services, regional behavioral health authorities, and child welfare. NABHO is not aware of any such service audits or similar fiscal or quality controls currently associated with the voucher program. And again, particularly with a voucher-centered system, continuous efforts to assure uniform and consistent quality service provision should be a paramount consideration. We do not endorse the creation of a state probation or parole bureaucracy for provider compliance purposes. Thus, the bill suggests leveraging existing systems with the audits and other oversight activities that are already regularly conducted with the regional behavioral health authorities and Health and Human Services. Please know, Mr. Chairman, that as an organization we are willing to actively participate in a dialogue with this committee and the probation and parole systems to assure proper program oversight and continued access. Thank you for this opportunity to provide testimony. [LB369]

SENATOR ASHFORD: Thank you, John. Thanks for all the work you do in this field and have done. Senator Lathrop. [LB369]

SENATOR LATHROP: Can I just ask one question, John? The fiscal note is a monster, as we talked about before you got here. Is it the auditing part that's the problem with the fiscal note? [LB369]

JOHN SNOWIECKI: You know, Senator Lathrop, I have to admit that was the first exposure I had to it was about ten minutes ago. I haven't had a chance to look at it. [LB369]

SENATOR LATHROP: Then answer the question this way if you would: What's...to what extent is the audit piece of this bill, of this legislation, important to you or for your organization? [LB369]

JOHN SNOWIECKI: Well, I think it's important for the fidelity of the program and the process. It's not unusual at all for providers to provide a funder with an in-depth discharge summary and reports. We do it all the time with all of our funders. And what we feel is sort of lacking with this program is there's no circle around and to confirm that indeed the level of care--the dosage of treatment, if you will--is being done by the providers that say they're being done. It's open to, you know, potential problems. We do not have any problem whatsoever with the chemical dependency assessment. It's very detailed on the information and I don't think this bill applies as it's written to

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assessments. But on an assessment level where there's just an observation between a credentialed staff and an offender, there's very detailed criteria that needs to be included in that report. We have no problem with the way that's being done whatsoever. I think perhaps the difficulties are, is the more you move up the continuum, like when you get into residential level of care where the clients actually stay at the facility, most of the time it's short-term residential level of care and it's a 28-day program, for example. Under the current standardized model, individual counselors are approved providers. So I don't know...and I'm hoping that...oh, there's Deb. I'm hoping that probation can explain how they...because I don't know this and I hope they can explain exactly how they look at facilities and whether or not they're accessible, they have food service that's appropriate, all the things that go into a nationally accredited facility that you have to have kind of minimum qualifications or minimum criteria to function as a residential treatment facility. Since under the probation voucher program only individuals are providers and not individual facilities, I think that's where it gets kind of complicated and there's a lot of confusion. [LB369]

SENATOR LATHROP: Okay. Thanks. [LB369]

SENATOR ASHFORD: Thanks, Senator Lathrop. Thank you, Senator Synowiecki. [LB369]

JOHN SYNOWIECKI: Thank you. [LB369]

SENATOR ASHFORD: Any other proponents? Any opponents? Hi, Deb. [LB369]

DEBORAH MINARDI: (Exhibit 4) Chairman Ashford and members of the Judiciary Committee, my name is Deborah Minardi. I'm the Deputy Probation Administrator and employed with the Supreme Court. You are receiving a copy of my testimony today, but what I would like to do is simply highlight why we are opposed to this bill. There are currently 747 registered providers across the state serving adult and juveniles under probation and drug courts. There are still pockets across the state that desperately need additional service providers. All of these providers are voluntarily signed up to serve these justice clients and have agreed to the rules and regulations that are set by both the standardized model and the fee-for-service voucher system. All of these registered providers are licensed under the Division of Behavioral Health. Each of these providers have within their scope of practice the ability to treat individuals with behavioral health problems. This include both individuals that are registered with the behavioral health regions but also independent providers and small agencies consisting of two or three providers grouped together. Of the 447 providers, 33 percent are independent providers. An additional 246 are small agencies, which means this legislation would affect approximately 66 percent of all of our providers, in particular, in our rural areas. Attached to my testimony today you have two maps. The first map demonstrates all of the independent providers that would be affected by this legislation and all of the small

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agencies that would be affected. Our trepidation with this legislation includes: limited access to treatment providers for adults and juveniles; that the added requirements of this legislation to these independent providers and these small agencies would be cost prohibited; that consequently, we would be reducing the pool of available providers across Nebraska and again with particular concern as it applies to our rural areas. The bottom line is adult and juvenile justice clients need accessible, effective, targeted, and timely evidence-based services, and we do not believe this legislation helps Nebraska to accomplish this goal. I appreciate your time and would be happy to answer any questions. [LB369]

SENATOR ASHFORD: No questions except to say that once we get to evidence-based treatment, then we can start making those judgments. So thanks, Deb. [LB369]

BUFFY CORNISH: (Exhibit 5 and 6) Thank you for letting me be here today. My name is Buffy Cornish, C-o-r-n-i-s-h. And I'm representing Choices Treatment Center today. Choices Treatment Center is a small agency located in Lincoln. First of all, is there a problem with the voucher program that needs to be fixed? Is there evidence that nonaccredited providers are providing lower-quality care? This bill appears to want to slap the behavioral regional model onto the voucher program without stating a reason for doing so. The rules for the behavioral health regions are different because the programs are different. The regions contract with large agencies to cover all needed services in a region, while the voucher program is tied to individual probation clients. Many providers have already had to pay for their criminogenic courses that were previously the standards which will no longer be valid with the new restrictions this bill would impose. The cost of accreditation and of obtaining a financial audit for small agencies compared to the number of voucher patients treated would not be cost-effective for individual providers. They would be forced out of the voucher program to the detriment of clients needing services, particularly in the rural areas. There is no need for an independent financial audit for providers who participate in the voucher program. Each voucher is tied to a particular client and authorized for a specific level of care and time period. An independent financial audit would provide little, if any, additional benefit in term of monitoring whether the funds in the program are being expended appropriately, and again place an unnecessary financial burden on these small agencies. What is really needed is the ability to measure the quality of service provided, which LB369 does not do. Our providers are all licensed to practice and feel that this proposal is an unnecessary restriction on their right to practice and will not improve the quality of treatment provided to probation clients. We have no problem with quality assurance initiatives such as site visits to review case files or other mechanisms to ensure that the quality of service provided meets minimum standards. However, this bill presumes that individuals providers are less qualified than large accredited agencies, and there is absolutely no evidence to support this. This bill would allow the committee to operate like an HMO, limiting the choices consumers have over who they seek treatment from. Currently, there is an effort underway to provide quality assurance

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for the voucher program. The Justice Behavioral Health Committee, JBHC, is a subcommittee of the Crime Commission composed of behavioral health providers, criminal justice and behavioral health agencies, and stakeholders. JBHC has established a provider subcommittee to examine the level of service, and has developed treatment standards and a program plan for registered providers. This subcommittee is currently working to develop a process by which the quality of treatment services provided to probation clients can be monitored in a cost-effective way. So why reinvent the wheel? If the concern truly is quality of treatment services, then the Justice Behavioral Health Committee already has an action plan in place. Let's use current resources instead of passing a bill that threatens the existence of small businesses and pushes services to larger agencies. Thank you for your time. [LB369]

SENATOR ASHFORD: Any questions? I don't see any questions. I disagree with you. I think that there has never been in this state a greater need for this sort of accountability that we're talking about. Certainly the preservation of services in the rural areas is key and must be expanded, but what John and Senator Lathrop have brought to us is a critical piece to this. The systems that are in place do not work, and as a result of that, we need to have a new and a more aggressive way to make certain that evidence-based treatment is provided. So with that, I appreciate your comments. And anything we do do must reflect the needs of the rural areas and to make sure those providers have adequate services. Thank you very much for your comments. [LB369]

BUFFY CORNISH: Thank you. [LB369]

SENATOR ASHFORD: (See also Exhibit 7.) (Exhibit 8) Any other opponents? Do we have any neutral testifiers? Okay, that concludes that hearing. We'll now go to LB44. How many are here to talk about LB44? Okay. Senator Lathrop and members of the Judiciary Committee, my name is Brad Ashford. I represent Legislative District 20 and I am here to introduce LB44. Let me, before I get into the bill itself and the amendment, which in effect is the portion of the bill that fills in the XXX part of the bill as originally introduced. The...27 years ago now I was introduced...when I first came to the Legislature, I was introduced to my good friend Senator Ernie Chambers. And the lesson that I have learned from Senator Chambers 27 years ago and have carried forward to this day is that there's value in every child; and if we were to count the number of times that Senator Chambers talked about the value of every child in this Legislature, it would fill volumes. About seven...six years ago, and my good friend Senator Amanda McGill is not here today because she's introducing bills in the Health Committee, but we in this committee dealt with what was called the safe haven, some people say, crisis. I'd like to think it was the safe haven opportunity. And at that time, Senator McGill, who I think was...may have been 26, but I don't...certainly not much older than 26, was the Chair...became the Chair of the safe haven committee to try to find out what was going wrong here; why were children aged 12, 13, 14--Senator Christensen, of course, remembers those days--why were those children being left off

by their parents at hospitals--because they could not be cared for. And Senator McGill started to talk about, my gosh, I think that there's quite a bit of mental illness amongst our young people. And the safe haven crisis became the safe haven opportunity. And Senator McGill's work in the area of mental illness and most recently in the area of human trafficking has underlined her commitment and it's helped me be educated in this topic. Also I think it was five or six years ago when Senator Lathrop investigated the Beatrice situation with his committee. And it was an abomination. What Senator Lathrop and his committee were able to determine was that no matter how difficult a life has become, there is great value to that life, and that the state has an overriding responsibility...maybe in many cases the most if not all of...the most important responsibility is to care for those people who without any question are vulnerable and subject to abuse. My daughter Ellie is 26, and when she was growing up she had and still does have a good friend and his name is Daniel Gutman; and Daniel is here today to talk about this bill. And I remember Daniel growing up as Ellie's friend, and then all of sudden he became an expert in the area of juvenile law and juvenile sentencing, first at the Southern Law Poverty Center and now in Washington, D.C., working on issues of juvenile sentencing and other juvenile issues. Also here today is a woman who was introduced to me a year ago, Dr. Kayla Pope, who started to very patiently--and it does take patience with me, those who know me--teaching me about mental illness. And Senator Coash has talked about it many, many times over the years that we've been on this committee. And Dr. Pope had the temerity to speak out in a courageous fashion to say the mental health system in this state, as it relates to juveniles, is an abomination. What is the result of all this? In my view, as we start our journey during this legislative session in this committee on the issues of juvenile justice, I asked myself...and we ask...all of us ask ourselves in this committee as we hear more and more about the issues involving children and mental illness and Kearney and all the things that we'll be dealing with in the next few weeks: Why is it that we have been unable to address the needs and concerns of our children? Why is it that we have failed to assist children in achieving their hopes and developing their dreams? Why is it that we do not recognize the sadness and struggles that they face every day in our modern society? Why is it that every day or so, in Omaha, Nebraska, children are shot? Why is that? Why are these children victims of violence? A few years ago I had an opportunity to serve as the executive director of the Omaha Housing Authority, and I remember getting a call at 3:00 in the morning from our public safety department, saying, Brad, you've got to come down here; we've got a little girl who was shot in her room in her bed with her siblings next to her. And I went down there. And by the time I got there, the young lady had been stabilized and she survived. But a drive-by shooter had driven down the street and opened fire on this particular place and this young girl was shot. Now what's going to become of that young girl and her sisters and her brothers over the years? We'll never know. Luckily, she survived. Why is it that we have deprived so many children of the education that they need to become citizens that can achieve in this society? Why...we have failed them over and over again. We've failed them through bureaucratic complacency. We have failed them by defaulting to, gee, they just don't have good

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families and there's nothing we can do about it. One of the most troubling results of this failure to address the needs of our children are the 282 juveniles, no longer juveniles, but juveniles who were convicted of serious crimes as juveniles that are now incarcerated in the Nebraska State Corrections Department; 27 juveniles when they committed a heinous crime of murder or some degree of murder incarcerated for life in the Nebraska...with the Nebraska Department of Corrections. What do we know about these children? What have we learned about them? LB44 is a bill that seeks to add a minimum term of years for Class IA felonies when applied to a person under the age of 18 years to bring Nebraska statutes into compliance with a June 2012 United States Supreme Court ruling in the case of Miller v. Alabama. In Miller, the court ruled that imposing mandatory life sentences without the possibility of parole on juveniles violates the Eighth Amendment of the United States Constitution. It is unconstitutional to disregard the needs of children. It is unconstitutional to do that. The court's rationale extended from previous cases, Roper v. Simmons and Graham v. Florida, detailing how juveniles are different from adults; prone to impulsive behavior and less able to understand the full impact of their actions and why this makes them less culpable for these crimes, even when the crime is egregious. The court ruled that judges needed to examine all circumstances of a case, and therefore, sentencing schemes like the one in Nebraska that mandate life imprisonment without the possibility of parole for juvenile offenders violates the Eighth Amendment of the Constitution of the United States. As drafted, as I mentioned, the bill does not specify a set number of years for the minimum sentence. After further reflection on this matter and talking to experts and to my fellow members of the Judiciary Committee, I have prepared an amendment, AM151, which sets the minimum term of years for juveniles sentenced under this act at 20 years. My amendment to LB44 would also provide that the sentencing court, as well as the Board of Parole when the juvenile is being reviewed, consider mitigating factors before issuing its sentence and rendering a decision regarding the granting of parole, such as the age at the time of offense, the juvenile's family and community involvement and environment, the juvenile's ability to appreciate the risks and consequences of their conduct, and so forth. The juvenile must serve at least ten years' incarceration before being eligible for parole. And it is also my intent that all juveniles sentenced as adults be eligible for parole after serving no more than ten years. So if their sentence is shorter than ten years, they would be parole-eligible under the current time frame. And that, if denied parole after their first parole hearing, they would be eligible for parole each year thereafter. The Miller ruling does not prevent courts from imposing life sentences without the possibility of parole for homicide cases; only that a defendant's age and other mitigating circumstances must be considered in making the sentencing determination. As the state of Nebraska only provides for the punishment of life imprisonment for the conviction of a Class IA felony, the state will need to include a minimum sentence of some specified length of time to provide that for the possibility for parole that a mandatory life sentence for a juvenile convicted of a Class IA felony is not the only available sentence. Another issue in the Miller case, as presented to the states, is how do we address sentences of those individuals who are currently serving a life

sentence without possibility of parole for crimes they committed when they were juveniles? The Supreme Court did not provide specific guidelines as to whether or not the ruling issued in Miller was retroactive to those cases. It is my intent to find language, though it is not yet in the amendment, to make certain that these standards and these criteria be applied retroactively to all inmates of the Nebraska Department of Corrections. As I said earlier, we are commencing on a journey in this committee to rectify the egregious mistakes of the past. It is unacceptable that there are 282 young people in the Nebraska Department of Corrections who committed serious crimes as juveniles. It is unacceptable that there are 27 individuals sentenced to life imprisonment without parole who committed crimes as juveniles. Some of these crimes, and all of these crimes certainly of the 27 that committed the most serious offenses, were very, very heinous crimes; in many cases, extremely difficult ones that are inexplicable and cannot in many ways be excused. But what we can learn from this experience and what I believe we must learn from this experience is that we will never, ever again forget that children are different, that many children are victims of mental illness, that many children have no hope, that many children have no pathway to the rest of their lives. And this is in a state that has some of the greatest wealth of any place, maybe in the world, right here in the state of Nebraska. So in conclusion, I think we should look at this certainly as a bill, something that we have to pass in order to meet the mandates of Miller. And I don't think 20-to-life is certainly within the framework of Miller, and is very similar to what the state of Virginia legislature has recently passed. But by taking this bill first, I think, and taking the most difficult cases first, sort of like starting from the violence and working backwards and trying to just work and dig in and fight, and never, never give up until we find that pathway for these children, and never ever believe that somehow we have solved the problem before it's solved. And with that, Mr. Vice Chair, Senator Lathrop, I'd be happy to answer any questions. [LB369 LB44]

SENATOR LATHROP: Senator Chambers. [LB44]

SENATOR CHAMBERS: Excuse me. Senator Ashford, I appreciate your bringing the bill. I appreciate you giving me the opportunity to sign on as a cosponsor. I believe in everything that you've said and I also think that the bill can be applied retroactively. When the U.S. Supreme Court struck down mandatory death sentences, it pointed out that where the sentence is so severe, the individual characteristics of each defendant must be considered. And if a mandatory death sentence is in place, it does away with any consideration of any differences, any mitigating circumstances. So when it struck down the mandatory death sentences, the person was not acquitted; the sentence became life. So in the same way that a mandatory life without parole sentence corresponds to what was then a mandatory death sentence, the court really had no choice other than to strike it down, because it meant that no consideration would be given to the individual characteristics that would separate one type of murder from another. Courts have stated, even though the public cannot grasp it, that any murder is going to cause great mental suffering to the victim if the victim is aware of impending

death. So despite all of those considerations which are valid, there nevertheless has to be in the system a consideration given so that only the worst, most atrocious type of taking of human life would result in the state having the authorization under the constitution to deprive a person of life as a punishment for a crime. So they required states to include aggravating circumstances which had to be present to justify a death sentence, mitigating circumstances to show why a death sentence should not be applied. You, wisely, in this bill set forth a type of aggravating, mitigating set of circumstances so that only those cases which are way out of the ordinary would result in a life without parole sentence. The court, mindful of the fact that all murders are regrettable, nevertheless said that there is such a thing as an ordinary murder. For those there could not be a death sentence. The death sentence would be excessive. So when you are looking at the possibility of life without parole for a juvenile, in my view there's nothing, nothing that a juvenile can do which would justify being in prison for life without a possibility of ever being allowed to enjoy that redemption that all these religions say that they believe in; the mercy, the leniency that everybody who ever committed an offense and is being punished for it asks for. I've seen where high-ranking politicians have been convicted of crimes, not murder, but their lawyers on behalf always ask for leniency, ask for mercy, and in many cases where adults who knew better, knowingly committed horrible offenses, were granted leniency and murder...I meant, and mercy. I'm going to support this system of sentencing that you've established, although if it were me, 20 years would be excessive. People have a way of not looking at what a criminal punishment is until it's going to be imposed on that person or member of that person's family. Some of the most rabid people--r-a-b-i-d--who are for harsh punishments, don't want them when people of their class are involved. And I'll give an example. The Attorney General of this state who is always talking about harsh punishments has not said anything about a Lieutenant Governor who misspent state money, misused state equipment. And the Attorney General can act. He won't. He hasn't said anything about it. But then if it comes to an ordinary person, he says, throw the book at that person. I'm hoping that people will take to heart what you said and it will be a matter of record that young people--and these are not the words you used exactly--there is scientific verifiable evidence that the brain of a youngster is not fully developed and matured, sometimes before 24 years of age. When we know that as a society and we are supposed to be civilized, and this is supposed to be a democracy which is based on recognizing the human dignity of every individual, how we could even have the possibility of a sentence of life without parole escapes me. But in a political environment, knowing the cruelty that informs this society, the hypocrisy that moves politicians, you wisely and perhaps unwillingly had to put in place a minimum sentence which is substantial. And 20 years is a substantial amount of time, especially if the child involved were our own. And the reason I said that, is not only to set a tone but to kind of explain why the Supreme Court said there cannot be a mandatory life sentence in every case where a juvenile commits a homicide. And also we know that there are adults who have committed horrendous murders who are allowed to plea bargain, usually in the rural areas where the loudest cries for the death penalty are found. When it's the people

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in their area, they cop pleas. They don't get sometimes even a life sentence. So when we look at this bill and consider those factors, I don't know how there could be somebody who would oppose what's being offered. But having been a politician for 42 years, and adding 4 more now, I know there will be opposition. And when that opposition shows itself, it will be taken into consideration, and those people will be given the opportunity to express their opposition, because that's what a hearing like this is for. And I think such opposition should be a matter of record. The opponent should have a face, a name, and his or her words should be committed to the record forever and throughout eternity. And that person had better never fall outside of the law and I find out about it. That's all that I would have. [LB44]

SENATOR LATHROP: Senator Seiler. [LB44]

SENATOR SEILER: In the cases you reviewed, and there were a few handed out, were there any elements set out in those statutes for review and the presentence investigation? [LB44]

SENATOR ASHFORD: Not...in the other states or in our state? In the other states? I don't...there may be, Senator Seiler, and I'd have... [LB44]

SENATOR SEILER: Well, I was just wondering if maybe we should give the court some guidance on it. [LB44]

SENATOR ASHFORD: I think the more guidance...I agree. That's a good point. And I think the more guidance that we can give in this area at that level of...in the process, I think is critical. I think it's...as do you, Senator Seiler, I have a great deal of respect for the Supreme Court of the United States. And something...when something rises to the level of Miller, where there is a recognition by the Supreme Court of the United States that a sentence of life imprisonment without parole for a 12- or 13-year-old is a heck of a lot different than a life sentence for someone who is 40 years old. And the recognition of the development of the...the brain development so forth and so on, is an amazing event, in my view. And I think it has opened the door to a tremendous amount of discussion about why these children are the way...why they get to this point in their lives. And any way we can help the trial court along the way in that process I think is critical, and I agree with you. [LB44]

SENATOR SEILER: I have nothing further. [LB44]

SENATOR LATHROP: I see no other questions. Do you have somebody that...or people, some order that you want proponents to come up in? [LB44]

SENATOR ASHFORD: Well, I think there are some...I think Dr. Pope is here and Daniel Gutman is here to talk about what's going on across the country, maybe those two

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or...I'm not sure of anybody else. [LB44]

SENATOR LATHROP: Do you want to get some experts on psychology first? [LB44]

SENATOR ASHFORD: Try to lay the groundwork, so... [LB44]

SENATOR LATHROP: I think that would be good. I see a number of members of the defense bar here. Maybe we'll hear from the sentencing experts and then Dr. Pope, or Dr. Pope and then the sentencing... [LB44]

SENATOR ASHFORD: Or anybody that wants to come up. [LB44]

SENATOR LATHROP: Okay. All right, we'll start with Dr. Pope. Welcome to the Judiciary Committee. [LB44]

KAYLA POPE: Thank you. Senator Ashford and committee, my name is Dr. Kayla Pope. It's K-a-y-l-a, Pope, P-o-p-e. I'm a child and adolescent psychiatrist that works at Boys Town National Research Hospital, and I'm here today speaking on behalf of the regional organization for Child and Adolescent Psychiatry. In addition to being a psychiatrist, I'm also an attorney and a neuroscience researcher, and I've been working with juvenile justice population for the past 20 years. And I appreciate the opportunity to come and speak with you today. I'm here today to address some of the clinical and scientific issues which are relevant to LB44, and to the overall issue of juvenile life without parole. Last year, as has been mentioned, the Supreme Court decided that such sentences, if mandatory, are unconstitutional for all crimes committed by juveniles under the age of 18. Their reasoning is that juveniles are not yet fully developed and that they are entitled to an opportunity to demonstrate that they have matured and have been rehabilitated. I am heartened by the Supreme Court's decision in Miller and the cases that preceded it, including Roper and Graham. In these decisions the court recognized what we know to be intuitively true: that adolescents are different than mature adults, act more impulsively than adults, and sometimes make really bad decisions because of their immaturity, and some of these bad decisions have serious and very significant consequences. But the question before the Supreme Court was whether it was fair, whether it was constitutional to hold an adolescent to the standards we hold a fully mature adult. And the answer was clear: No. Today, Nebraska has an opportunity, an important opportunity to modify its current legislation to comply with the spirit and the rationale of the Supreme Court decision. Both the Academy of Child and Adolescent Psychiatry, which represents 8,000 child psychiatrists, and the American Psychiatric Association, which represents 40,000 adult psychiatrists across the country, have issued strong and unambiguous statements opposing life without parole for juvenile offenders. From a clinical developmental standpoint, our objection is rooted in the fact that brains of adolescents function in fundamentally different ways than the brains of adults. We frequently recognize that fact in law and we establish minimum

ages for exercising certain rights, responsibilities, and independent judgments. Examples often cited include: the right to vote, the right to drive, purchase alcohol, and make medical decisions. We all know that adolescence is a turbulent time in kids' lives. Kids are growing rapidly and maturing in multiple levels, which are not always well synchronized. For example, we've all seen 14-year-old boys who suddenly shoot up to over 6 feet tall, yet their ability to make decisions is still very immature; or 15-year-old girls who appear very mature in physical impression but still have emotional reactions equivalent to that of a much younger child; and we all know bright and usually very responsible 16- and 17-year-olds that will get into the car of a friend who's drunk. Research studies have indicated that adolescence is actually a very active time of growth and development at the physical level of the brain. Specifically what we have seen is a rapid increase in the interconnections between brain cells. We've also seen growth in what is called the gray matter of the brain, followed by a refinement of the connections and pathways. It is important to understand that the primitive or instinctual part of the brain develops first, followed by the parts of the brain that control reasoning and that help us think before we act. In terms of actual brain anatomy, we're talking about the amygdala, which is the more primitive part of the brain, and responsible for gut actions, including aggressive and impulsive behavior versus the frontal cortex which develops later and helps us control our emotions and think more analytically. Research using functional magnetic resonance imaging, a kind of MRI, has demonstrated that adolescents actually use their brains differently than adults in reasoning and solving problems. For example, they tend to rely more on their amygdala, the instinctual part of their brain, and less on their frontal cortex. Research has also identified other areas of the brain that are very involved in these cognitive processes and are still not fully mature in adolescents. And we know that all these anatomical structures change physically throughout adolescence and well into the mid-20s. We also know that a high percentage of juveniles who commit violent crimes have significant mental health problems, and most of these kids have been the victims of abuse or neglect and otherwise exposed to violence in their schools or homes and their communities. It is also worth noting that a significant number of these kids have been exposed to alcohol, cocaine, and other drugs while...before birth, and all these toxins do have an effect on the way a child's brain functions. In the area of juvenile justice, it has long been held and children and adolescents who commit crimes, even serious crimes, require a different response than adults who commit the same offenses. The juvenile justice and child guidance movements were built on this belief, and children and adolescents are more malleable and more likely to respond to interventions than adults. Their behavior patterns as well as their cognitive and neurological development are not yet finalized, and as a society we broadly recognize this fact. As a result, we've established separate courts and programs for juvenile offenders. In summary, from a scientific standpoint... [LB44]

SENATOR CHAMBERS: Excuse me, Dr. Pope... [LB44]

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KAYLA POPE: Sorry. [LB44]

SENATOR CHAMBERS: ...because that red light is on, may I ask you a question? [LB44]

KAYLA POPE: (Laugh) I was ignoring it. [LB44]

SENATOR CHAMBERS: May I ask you a question? [LB44]

KAYLA POPE: Yes. [LB44]

SENATOR ASHFORD: Senator Chambers. [LB44]

SENATOR CHAMBERS: Thank you. [LB44]

SENATOR ASHFORD: Or Senator Lathrop can... [LB44]

SENATOR CHAMBERS: Are the findings and conclusions that you're expressing accepted in the field that you are a part of? [LB44]

KAYLA POPE: The brain research? [LB44]

SENATOR CHAMBERS: Yes. [LB44]

KAYLA POPE: So the Supreme Court, in going through all these decisions, called upon the most experienced and knowledgeable members of the scientific community, and all the studies that were included in their decision were thoroughly reviewed; and yes, there is broad consensus this is true. [LB44]

SENATOR CHAMBERS: Do you have additional conclusions and information in the remainder of your statement? [LB44]

KAYLA POPE: Just a few more comments if you all... [LB44]

SENATOR CHAMBERS: Do you mind completing? [LB44]

KAYLA POPE: Thank you. In summary, from a scientific standpoint, it is quite clear that adolescents are biologically and developmentally different than adults. And based on these considerations, Justice Kagan concluded that juveniles as a class have lessened culpability and are less deserving of the most severe forms of punishment. While I realize this is a controversial topic, I would urge you to put emotions aside and look at the scientific research. Adolescents are not the same as adults, even when they commit serious crimes. They are more likely to grow, change, and mature over time and are

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more amenable to rehabilitation. And for these reasons, they are entitled to a review, assessment, and a potential second chance. And let me stress, a review does not mean automatic release from prison. And in all instances, safety of the community should be taken into consideration. I thank you for your time and I will take any questions. [LB44]

SENATOR LATHROP: Thank you. Senator Coash. [LB44]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Doctor, for being here today. Last session, Senator Council had a similar bill, and in her bill...and I supported it. And in her bill she made a distinction between...I believe it was 16 years old, and there was evidence presented that...or we were made to believe that under 16 is a little bit different than over 16. So I want to ask you from your research medical experience, you talked a lot about 18 and that's the adolescent...is there a significant difference in development when we get down to 16 as that bill that we had before us last year? [LB44]

KAYLA POPE: I'm not sure of the bill that you're referring to, but most the research has part of, which actually Senator Chambers referred to, adolescent brain development continues well on into the middle of the 20s. And so most people would say that by 25 you're fully mature, your frontal lobes are completely on line and you do think like a mature adult. There, of course, are gradations and differences between 15, 16, 17, 18, as would be expected as these processes continues to develop. But I'm not sure what the issue was with the bill and with the 16- to 17-year-old cutoff. [LB44]

SENATOR COASH: That bill made a distinction with regard to sentencing had you committed the crime when you were younger than 16 versus older than 16, giving the impression that there was some difference at that age. And I wanted you...didn't know if you could comment on that. [LB44]

KAYLA POPE: The science would certainly not indicate that that would be a clear demarcation. The 25 age would be a more clear demarcation. It would be consistent across the population. [LB44]

SENATOR COASH: Okay. Thank you, Doctor. [LB44]

SENATOR LATHROP: I do have a question for you, Dr. Pope. When you talk about adolescents doing things that they haven't thought through, sort of on the spur of the moment, not thinking things through, can an activity be so serious that it rises above that? Some...I get the idea that someone who is young and in the case of these fellows that were involved in the Supreme Court case, they did stuff sort of on the spur of the moment, bad judgment, something got away from them. But how about the young person who plans something out and...who plans something out? Does the brain development explain why they did it, or do they have the same criminal intent of an

adult when it is a well-thought-out and a planned-out homicide? [LB44]

KAYLA POPE: I think the brain development...it's clear that they are not considering the choices before them the same way an adult would consider those choices, and they don't have the same kind of controls and brakes in place. So there are significant differences. And I'm not sure that's really answering your question. Are they still capable of premeditation, planning ahead and planning out a crime? Yes, they are. But what they would actually do in a heated moment or an emotionally charged situation would be very different than what an adult would do. [LB44]

SENATOR LATHROP: If we put this in place and change the sentencing... [LB44]

KAYLA POPE: And actually just one addition... [LB44]

SENATOR LATHROP: Oh, go ahead. I'm sorry. I didn't mean to interrupt. [LB44]

KAYLA POPE: I think the other piece is that adolescents don't really have the capacity to consider future consequences the way adults do. So they may plan something but they won't really appreciate that this is going to result in X, Y, and Z, life imprisonment, etcetera. They don't take that into consideration in deciding whether or not to do something. [LB44]

SENATOR LATHROP: If this is in place, should the court try to divine from the circumstances whether they're youth and the absence of a fully developed brain is the difference between them doing it and not doing it? [LB44]

KAYLA POPE: I think that should certainly be a factor for consideration, so...and remember, the court was considering normal brain development. And I think what we also are talking about here is considering those other additional factors like abuse and mental illness and exposure to toxins that are also going to play a role in how a child makes a decision. [LB44]

SENATOR LATHROP: Okay. Thank you. Senator Ashford. [LB44]

SENATOR ASHFORD: Just very briefly, just to...and I think that, just a brief statement, that the failure to determine mental health issues in the system, not only in Nebraska but throughout the country, is a real factor that the Supreme Court recognized that when making those kinds of determinations, if there hasn't been that ability to follow up on mental illness early in a child...and that the Supreme Court is saying, look it, the system has failed in the area of mental illness; we want you to look at the mental illness issues involved in each individual defendant I think is a...it's a recognition of that, is it not? [LB44]

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KAYLA POPE: Absolutely. Mental illness and also trauma...exposure to trauma, so. [LB44]

SENATOR ASHFORD: Right. And then lastly, I would thank you for taking the time to teach me about mental illness and probably, most appropriately, to speak out. As a professional I honestly don't remember anybody in my career who is in a position like yours to be able to stand up and say you really have a lot of work to do in your state. I mean that takes...you know, maybe now we'll get more of that. But thank you for doing that. Thank you. [LB44]

SENATOR LATHROP: Senator Chambers. [LB44]

SENATOR CHAMBERS: I think Senator Lathrop's question was right on time and it has to be confronted. What do we take into consideration when it appears that a child has thought this out? And I think Dr. Pope mentioned not recognizing the true gravity of the situation, realizing the circumstances of what will develop after they've done it or the consequences. And we hear it stated always that young people think they're immortal. They take all kind of daredevil risks because they don't recognize the true nature of the danger involved. Even the concept of death is different for them and they will do things. They'll see something on...well, I'm not a technology geek, as people in the Legislature know, so if I give the wrong name I'm not trying to be funny. But on Facebook and those kind of outlets where they will see something done and it will be discussed on the news and other places as endangering your life, and they'll see it done and they'll do it, and some of them will die. They will play games where you stand on a stool and you have somebody put a rope around your neck and move the stool and then you go into a certain stage of ecstasy and then somebody will free you. But then they found children who were throwing ropes over the tops of doors and putting it around their neck and kicking something out from under themselves, and there was nobody to rescue them and they found their children hanging in basements, in closets, and they couldn't figure why. Then they saw how this was a practice among young people. In countries where they use citizen soldiers they can take young people--I mean young, 12 and 13--and get them more accustomed to death and killing than they do older people, and they will go into situations where their lives are at stake, more willingly because an adult told them to do it. They more quickly overcome the feeling of remorse or guilt when you take a life because somebody told you to kill. So when you have concrete examples of this and where they use the child soldiers, it's on a massive scale so you can't say, well, you've got a child over here who is freakish, you've got one over here who is a natural sadist. These are children who came from homes where that kind of thing was not taught. When they would talk to some of these children who had been turned into soldiers, they would talk like we're talking now: Well, yeah, that was terrible; I remember that I went in a house and they had a little baby and they told me to cut the arms off and I just cut the arms off because I was supposed to bring them back because they were going to use this to give...make these people younger. But they still, even at that point, didn't see it

as morally wrong. Now they saw it as not the thing to do because somebody said children are not supposed to act like that. But as far as an inner conviction that what I did had any moral content to it at all, they don't even have a concept of what morality is. So when I see a country like America condemning the misuse of these children soldiers and pointing out these devastating things that happen to them and how they probably will never be straight after that, then when it comes to treating its own children, all of that goes out the window. And I will say about America what had been said about England when they were drawing and quartering people as punishments, England has the most humane laws and the most barbaric punishments. That's America. They can talk about complexion. They can talk about humanity. They can talk about all of these things. But then, when it comes to the punishment, the more barbaric it seems, the more it's liked. So I think what Senator Lathrop put in his question will cause us all to consider how we will respond to people who say, well, this child even wrote about how this was going to be done. Well, to write it doesn't mean you understand it. And the final example: Little children can be persuaded to perform sex acts that they don't even understand. They don't even know what they're doing. They're told that this is the right thing; this is what big boys do so you do it too, and the little boy goes along; the little girl does it, and the only time they become aware that something is wrong is when somebody tells them. So I wish that as we consider this bill, we bring all of these things that we know to bear while at the same time understanding that we're in a society that is going to demand not just punishment but retribution. Not saying the act you did requires you to lose a certain number of years of your freedom, but they want you to hurt. They want the punishment to be painful. They want to try to replicate, in the one being punished, the fear or the agony that the sufferer of the crime felt. But when they get to that point they want to invoke the Bible that says an eye for an eye and a tooth for a tooth, but the rabbis who dealt with that will tell people you can't take an eye for an eye because the eye you're taking may have greater acuity than the eye that was taken. So if this person took that person's eye, you cannot take half the vision from this eye. So if you take an eye that's greater in acuity than the eye that was taken had, then you're committing an injustice. So they began to substitute and said if you took an eye we cannot determine that each eye is equal so what we do is find some way to compensate that person for the loss and a way to punish you for taking it but we don't take your eye. If you broke a tooth, we don't break a tooth. And that's where that concept of damages came in where that's how you atone for a wrong that you did. And again, I'm using you for a sounding board, but it's a chance to get some things into the record. And now I do have a question I want to ask you. Since you have reached a point you find yourself at now after your research, your study, your experiences, do you view things where young people are concerned differently from the way you did before you arrived at where you are now? [LB44]

KAYLA POPE: Before my training? [LB44]

SENATOR CHAMBERS: Yes. [LB44]

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KAYLA POPE: I think I always had a very compassionate heart and I think I spent my life trying to understand why kids do the things that they do and trying to develop ways to help them and prevent them from doing them. Yeah. But I agree with you, children don't know; they're told. And their moral compass, it's not internal; it's external until they get into late adolescence in the 20s and then they learn their own internal moral compass. But that's a process that takes time and the environment needs to support that development. And oftentimes it does not. [LB44]

SENATOR CHAMBERS: I appreciate your coming and sharing with us. Thank you. [LB44]

SENATOR LATHROP: Very good. Thanks, Doctor. Our next witness is... [LB44]

SENATOR ASHFORD: I think Daniel Gutman is. [LB44]

SENATOR LATHROP: ...on his way up. If you want to give it to the page. Welcome to the Judiciary Committee. [LB44]

JEREMY HERMAN: Thank you. Thank you all for letting me cut in front of you. My name is Jeremy Herman, J-e-r-e-m-y H-e-r-m-a-n. I'm a proponent for this and other things. I don't have a speech on that research. I don't have anything like that for you, but I've heard...I've only been here about 20 minutes, I've heard a real...a whole lot of stuff. I'm trying not to use profanity. But thank you, gentlemen, for your time today. I could give you an example of somebody who did plan extensively a murder when he was 15 and did it, and he did seven and a half years in prison and got out. I could tell you of somebody who, in a similar situation on the spur of the moment, committed a murder when he was 13 and he's still in prison after about 28 years with a life sentence. I can tell you that we don't really need all this research about the brain of a young person and how they think because we were all 13, 14, 15 before, I believe. We all know that we were dumb, really, really dumb at that time. You know, we watch TV, we watch Schwarzenegger and Rambo, okay? We see that if you want something done, you go get a gun. I could tell you a whole bunch of stuff that you've already heard. You don't think about what you're doing, you don't think about the consequences. None of that stuff matters. It's just the immediate moment. I remember when I was 13 I couldn't wait to be 16 because then I could drive. Those were the three longest years of my life. I did 20 years in prison and those three years that I did waiting to drive seemed longer than the 20 I did in prison, because I was a kid, because I didn't have a point of reference. When my life sentence was lifted I knew beforehand that it was going to happen. I knew I was going to get out. And when I did I didn't know what to expect. I had no idea. But when I stepped out there and I went downtown in Omaha and I saw how things had changed, I ordered food at a restaurant and was stopped from lighting up a cigarette because I was told the law had changed; you can't smoke in a restaurant anymore.

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When I took my driver's test and I failed 13 out of 15 points but they still gave it to me, I realized some things had changed there too. But I got on. I had to be self-sufficient, and the only way to be self-sufficient is to work, so I went to work to make money and take care of myself, buy a vehicle, get a place to live, go see my family, learn how to use a computer, learn how to use a cell phone. Those are things that all these guys who are now in jail who have done more time than me--30, 40 years in some cases--can do if and when they get out. It's not hard. Three hundred million people in America seem to go through life every day with no problem. These two dozen guys who are in jail now with life sentences can and will, quite easily, do the same thing I've done. Not get in trouble, go to work, buy your food, pay your rent, meet a girl. But getting them out and setting a time frame for when they get out is what we're talking about. What we do here will most likely influence eventually what happens to these guys who are now in prison, because I don't believe we can set a law that will be retroactive to affect the guys who are in jail now. I don't know. But if we go and say 20-to-life, which is extremely reasonable, that leaves it up to the Parole Board; that leaves it up to the prison system. They'll put in the recommendations and say, yeah, he's got his act together; he can set him up for parole, and then it's on the Parole Board and then it's on that person, their individual merits. [LB44]

SENATOR LATHROP: Very good. Thanks. We'll see if there's any questions for you, Jeremy. [LB44]

JEREMY HERMAN: Okay. [LB44]

SENATOR LATHROP: We appreciate your testimony today. [LB44]

JEREMY HERMAN: Thank you. [LB44]

SENATOR LATHROP: I do not see questions, but thank you for coming down. [LB44]

JEREMY HERMAN: All right. Thank you for your time then. [LB44]

SENATOR LATHROP: We appreciate hearing from you. [LB44]

JEREMY HERMAN: Thank you. [LB44]

SENATOR LATHROP: Daniel, do you want to come up and we can...? [LB44]

DANIEL GUTMAN: Thank you, Senator Ashford. My name is Daniel Gutman and I am the state strategist with the Campaign for the Fair Sentencing of Youth. And the campaign is a national organization dedicated to ending, reducing, and abolishing the practice of sentencing children to life in prison without the possibility of parole. And I think there's a number of questions that deal with kind of the legal ramifications of Miller

and what the Miller decision says and what brain science experts are saying. I think we'll leave that to other folks to answer those questions. But I think naturally when a body like this is considering legislation, especially as a result of a Supreme Court case, a lot of questions arise as to how are other states handling this very issue, because a number of other states are also considering legislation to bring their state statute into compliance. And I think the easiest way to explain it is it's yet to be seen. A number of legislative sessions are just starting and this issue is just coming up. I think it's also hard to compare states to other states because of, you know, the various statutes and differing statutes. We have seen some action around Miller and we've seen the consequences of those actions. I think many people are familiar with something that happened in Iowa recently, the commutation of sentences to 60-to-life, mandatory 60-to-life. We've also seen, in Pennsylvania, they had mandatory sentences for both first and second degree, so felony accomplices were receiving mandatory life. They have since adjusted that, and first-degree murder in Pennsylvania is now eligible for 35-to-life. What we've seen from both of those actions is costly litigation. I mean, the state in Iowa, there's challenges arising because of that 60-to-life structure. There's arguments to be made that that still violates the Miller decision. So I think that as you are thinking about what you want to do and I would...our organization would support the proposal that's on the table, you know, thinking also about the consequences. You know, as Senator Ashford mentioned earlier, this is not the first time the Supreme Court has heard this. This is...it's really unprecedented that the Supreme Court has taken up this issue or similar issues three times in the past six years, and each time they've said that kids are different than adults; they cannot be handled in the same way as adults. And that doesn't mean defaulting to a 60-to-life scheme. It does not mean let's pick the next worst thing. It's saying we have a shift. These policies are not designed, these mandatory life imprisonment sentences, or in the Roper case, the death penalty, are not designed for children. And therefore, we need to adjust our statutes accordingly and not just revert to the next worst thing. And if we do, like in the case of Iowa, it's going to continue dragging on. It's going to continue costing the state a lot of money. So I'm happy to answer any questions. Like I said, the states are very specific and if there's questions that I can't answer, I'm happy to follow up. But thank you very much your allowing me to speak. [LB44]

SENATOR LATHROP: Very good. Thank you, Mr. Gutman. Senator Coash has a question for you. [LB44]

SENATOR COASH: Thank you, Senator Lathrop. So we have to pick a number here, right? We have to pick a number that recognizes all the science, but also recognizes the need for justice... [LB44]

DANIEL GUTMAN: Sure. [LB44]

SENATOR COASH: ...for the crime. Iowa picked 60. That's in the courts. Senator

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Ashford has presented 20 to this committee. If you know, since you've been following this through your organization--that's why I'm asking you--where are other states landing in response to the Miller case? [LB44]

DANIEL GUTMAN: That also is going to vary by state considerably, and it depends on a number of factors including what's the next lesser offense, where that line is drawn. But what we're seeing now is, you know, a few different trends, one of them being, you know, I know that Massachusetts right now is considering a proposal that would offer parole eligibility at 15 years. There is...Virginia is looking at a bill that would drop it to their next lesser offense which would be 20 years. You know, there's other states that are throwing a lot of numbers out there that could very well change rapidly. So it's hard to say that this state or a number of states are considering just this number because it changes a lot. I think in relation to the brain science, as Dr. Pope said, you know, there's clear argument that the brain is fully formed at the age of 25. And when you're thinking of that, you know, we need to be having reviews later in life once the brain is developed. And when we're talking about reviews, we're not talking about release. I think that sometimes that's confused...people get that confused that we're talking about we're releasing at 20 years. No, it's a matter of knowing everything that we know now with the Supreme Court precedent and all of the science, reviewing that case at a certain number of years. [LB44]

SENATOR COASH: I understand there's not a mandatory release. But 20 becomes 10 with good time, or can become. And it's not to say you get out at 10. It's to say you're eligible. And I think states have to balance...we as a committee are going to have to balance not only all this evidence that I agree with, and I don't dispute the evidence, but there's also an element of justice that we have to impose as part of our sentencing. And I just want to know...I was just asking because I want to know, you know, 60 seems...that's in the courts and I see why; 20 is down here. I want to know, we're always interested how we stack up. Tax policy, sentencing, we always want to know where we are in relationship to the 49 other states, and that's a consideration for me. So if you have that data, I'll be glad to look at it. [LB44]

DANIEL GUTMAN: And it might be a process that's ongoing, and I'm sorry that I'm offering such a vague answer and it's really because so many states are just now thinking about this and also considering the same things. And it's going to really vary by state. It's really hard...this is a really hard issue to stack state by state, saying, oh, they're doing this so we should, because all the statutes are so different. But I'd be happy to follow up in any way that I can to provide that information. It's just always changing. [LB44]

SENATOR COASH: I understand. Thank you. [LB44]

DANIEL GUTMAN: Thank you. [LB44]

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SENATOR LATHROP: Very good. Do you have a question? [LB44]

SENATOR ASHFORD: Senator Seiler, I think. [LB44]

SENATOR LATHROP: Oh, yes. Senator Seiler. [LB44]

SENATOR SEILER: Okay. Thank you, Mr. Vice Chairman. I noticed in the handouts, and you probably haven't seen them, but I'm hoping you have run into this in your research. They call it mitigating circumstances. And there's a list on page 4 of this handout of about eight items and then another six besides...the court can look at everything they want to. Have you seen those types of lists and not so much in the transferring of Miller to today, but in the future these are the items that the court should look at in deciding whether it should be 20 years or life? Have you seen a list of those items? [LB44]

DANIEL GUTMAN: In other states? [LB44]

SENATOR SEILER: Yes. [LB44]

DANIEL GUTMAN: To the extent...and again, like I said, it's changing a lot. But to the extent that states are considering it, most states are taking those mitigating factors directly from the Miller decision. And so they lay out a number of mitigating factors that I know some attorneys are going to testify to later. And... [LB44]

SENATOR SEILER: Okay. Just so somebody is going to testify, that's fine. [LB44]

DANIEL GUTMAN: Yes. Yes, thank you. [LB44]

SENATOR SEILER: Thank you. [LB44]

SENATOR LATHROP: I see no other...oh, Senator Ashford. [LB44]

SENATOR ASHFORD: I just want to...you've turned out pretty well, Daniel. (Laugh) So we did... [LB44]

DANIEL GUTMAN: I was hoping that Senator Chambers wasn't going to ask me about my early teenage years and how I acted. [LB44]

SENATOR ASHFORD: Well, he can ask me about it and I will try to fill him in. But generally they were pretty good from what I can recall. Thank you, Senator Lathrop. [LB44]

SENATOR LATHROP: All right. Thank you. [LB44]

DANIEL GUTMAN: Thank you. [LB44]

SENATOR LATHROP: Next proponent. [LB44]

SARAH FORREST: (Exhibits 9 and 10) Good afternoon, Senator Lathrop, members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t. I'm the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. And I'm here today to support of LB44, eliminating the practice of sentencing children and youth to life without parole, a practice unique to the United States. All children deserve and need society's protection to grow into healthy and productive adults. Even children who commit serious crimes are still children. So as a society we need to respond to youth's actions in a thoughtful and effective way that preserves our community safety, guarantees Nebraska's prosperous future, and gives children the protection that they need. LB44 is good public policy. It establishes greater compliance with the Supreme Court decisions that have been made over the past seven years which have repeatedly held that youth are different than adults and must be treated as such. It creates greater consistency with our treatment of youth here in Nebraska. Think of the restrictions on voting, smoking cigarettes, consuming alcohol, those very practical teenage experiences which we've all had that make us realize that youth are different, and this allows us to treat them more consistently. This bill is also consistent with our knowledge of adolescent and child development which was outlined so well by Dr. Pope. Finally, it replaces a costly and ineffective policy that harms our children and, frankly, our state budget as well. Recent analyses have shown that for every juvenile committed to life without parole in the United States, approximately \$2 million are spent. As that inmate ages, of course, costs go up and medical things must be provided for, think of the possible benefit that a teenager, a young teenager so full of promise, presents to our society. That same youth, if perhaps given different services and different opportunities, perhaps could become a taxpaying citizen. College-educated people, over their lifetimes, have been shown to contribute \$1 million to our society. So when we think about what is effective and what preserves public safety, we also need to think about costs and how these young people really could contribute to our society if they were given that chance. This is also a critical piece of Nebraska's broader and ongoing look at child welfare and juvenile justice reform. It's a piece of how we protect our children. So our responsibility to protect children requires us to hold them accountable, but in a way that gives them the opportunity for rehabilitation, redemption, and hope for a second chance. Voices for Children in Nebraska is very thankful to this committee for its work over the past four years and its leadership over the past few years on child welfare and juvenile justice issues. For us, LB44 fits within that package of looking at how we treat our youth and improving our policies. In summary, we believe it's an important part of this work and we urge you to advance it. And I would welcome any questions. [LB44]

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SENATOR LATHROP: Very good. Thank you, Sarah. I see no questions. [LB44]

SARAH FORREST: Perfect. [LB44]

SENATOR LATHROP: Thank you. Next proponent. [LB44]

WEBB BANCROFT: Good afternoon. [LB44]

SENATOR LATHROP: Good afternoon. [LB44]

WEBB BANCROFT: I'm Webb, W-e-b-b, Bancroft, B-a-n-c-r-o-f-t, and I'm from the Lancaster County Public Defender's Office, and I'm here in support of LB44 and the amendment that has been made. Just a couple of questions. I think one of the things that Senator Coash addressed in terms of 20 years, it can be 20 years or with good time it can become 10 years. What Miller says is there has to be a meaningful opportunity. And the dispute that they're in, in Iowa and in a number of jurisdictions, is by going in and arbitrarily setting hard numbers of 60 years, that means somebody at 15 is going to be considered for parole at 75 years of age. That is not either a meaningful opportunity or one that comports with any idea of due process, fundamental fairness, and most importantly, the line of cases that have come down and have addressed those differences with juveniles. It is a process of education and it's a process of educating those of us who are attorneys, of listening to the doctors, and now our discussions with the Legislature. But we're talking about an opportunity to be heard. It is hard to look at this bill in a vacuum because as we address the whole juvenile justice system and things that are near and dear to so many of our hearts, for example, juvenile transfer hearings, are we going to change those to where they're done and they're really effective hearings in the juvenile court where you have base studies on children, where you know what their background is, where you can get mental health evaluations? Are you going to have those kinds of base studies available to you for those individuals that are transferred in the adult court so you have somewhere to start with those folks? So I think in looking at LB44 and the amendment to it, we really have to look at it in the context of how we're evolving and looking at all juvenile services, and this is just one component to it. But the meaningful opportunity to be heard and the mitigating factors and I think there are other speakers that are going to address those, those are the kinds of things that we're going to look at, at a parole opportunity, a date after ten years of being in prison that somebody can start looking at what you have done and what you've been able to do. As a personal experience, when at first the Board of Parole was going to address this matter and as an attorney got some notice of it, they wanted to know what these people had done in the programs they had available to them in prison. Well, I think everybody knows they haven't been providing any programs for people in prison for years. There's no program they could have availed themselves of. So again, if you're going to set up a program, let's have those types of measuring sticks, those opportunities for people who we do decide are going to be incarcerated so they can

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demonstrate the growth that they experience from the time that they're juveniles until the time that they're first being considered for an opportunity to be released back into the community. A lack of that kind of opportunity puts you in no position to demonstrate anything besides...I can go through a prison day and nothing else. It doesn't talk about education. It doesn't talk about treatment. It doesn't talk about any access to mental health. So I think all of those things are extremely important when we're considering this. As I understand the amendment, the only issue that our office took exception to is it said 20 years to life in prison. We actually believe it should be up to life in prison, more akin to what second-degree murder is. Or if a judge in their mind thinks it does not have to be life at the top, they can, based upon what they look at, set it for a term of years and it would also have a mandatory discharge date. So all of these considerations, I think, are truly things that need to be looked at in terms of the whole reform of the juvenile justice system. [LB44]

SENATOR LATHROP: Very good. Thank you, Mr. Bancroft. Any questions for this witness? I see none. Thanks for coming down today. [LB44]

WEBB BANCROFT: Thank you. [LB44]

SENATOR LATHROP: Next proponent, please. [LB44]

DENNIS MARKS: Good afternoon, Chairman Ashford and members of this committee. My name is Dennis Marks. I'm with the Public Defender's Office in Sarpy County where I've been for roughly 16.5 years representing juveniles. I'm here to testify on behalf of LB44. We've heard talk about Miller and Graham, and Dr. Pope testifying about the differences in adolescents. A good reference, if you're interested, is the amicus briefs submitted by the AMA and the APA, the American Psychological Association and the American Psychiatric Association, which was submitted in Graham, and heavily... [LB44]

SENATOR CHAMBERS: Excuse me. Could you speak just a little louder? [LB44]

DENNIS MARKS: I'm sorry. [LB44]

SENATOR LATHROP: Yeah. We need to record it. [LB44]

DENNIS MARKS: Okay. The APA is the American Psychological Association and the American Psychiatric Association. I would urge you to look at those amicus briefs that really set out the development of the brain that Dr. Pope testified on. But I'm here to testify more about mitigation factors, which I know you expressed an interest in, Senator. Miller set forth several factors: age of the defendant at the time of the offense, impetuosity, family and community environment. Family environment is important because juveniles are juveniles. They don't have control over their environment. They

don't pick who their parents are. They can't pick who their relatives are. They can't extricate themselves from their homes or their neighborhoods, so the family environment is important. The ability to appreciate the risk and consequences of conduct, again, it goes to the juvenile mind-set and the underdeveloped brain that the juveniles and adolescents have. Intellectual capacity, because some of our juveniles who have committed these crimes have limited cognitive ability. There are the outcomes of a comprehensive mental health evaluation conducted by an adolescent mental health professional licensed in the state of Nebraska. It's important that that person be an adolescent expert, able to talk about the developmental milestones and attributes that an adolescent has. One of the factors that is specifically listed in Justice Kagan's decision in Miller deals with peer pressure. And I don't think that's one that can be underappreciated. When I looked at the APA brief, there was a discussion in there that juveniles are likely to commit crimes in the presence of other peers. And, in fact, the vast majority of crimes are committed by juveniles in groups. I look at the 27 cases that we have that were juveniles that are in prison, and 18 of them committed these crimes with codefendants and accomplices. That's 2 out of 3. I don't think we can undervalue or underappreciate peer pressure. One factor that's not necessarily listed in Miller is the impact of trauma. I think that's very important. Juveniles who have been traumatized, it affects their development. They become hypervigilant and their reactions are often reflexive without thinking, because they attempt to prevent themselves from being revictimized and they do so in ways that tend to get them in trouble with the law. The ability to participate meaningfully with defense counsel, and I think we'll have somebody talking about that, it's just awfully difficult sometimes to communicate with juvenile clients who don't understand the concepts of the criminal justice system. The capacity for rehabilitation has been discussed in Miller. That's my time and I... [LB44]

SENATOR LATHROP: Okay. Thanks, Dennis. Any questions for this witness? Senator Chambers. [LB44]

SENATOR CHAMBERS: Not necessarily a question at the outset, but you mentioned the trauma that some of these youngsters might suffer. People, you say it, it's very important but it's spaced off. If that same comment is made about an adult, then pretty soon it takes on significance. Some guy just shot a friend of his who was a sniper, and they're talking about perhaps he had some posttraumatic flashbacks that led him to do that, and they're finding mitigating circumstances because it's an adult. But if similar type things had happened to a child, it's to be disregarded; he is evil. Now they're talking about the trauma caused by concussions suffered by athletes, and suddenly they're looking differently at the misconduct of athletes. Some of it results in the athlete killing himself, but with others there are mood swings that nobody understands, violence without provocation. But they're now starting to say, could there be something that had happened to this person which now is organic and would account for what he or she is doing? I'm just saying that to indicate that when it comes to adults, since we're adults we understand each other and we're going to make excuses; but if you're going to not

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give an excuse to a child 13 years old, why are you going to give an excuse to a strapping, grown man, 30 years old, 6 feet 6, 280 pounds, able to run into a wall and move it, but he may genuinely have had some brain trauma? So when he grabbed somebody or did something that would be considered antisocial, there's a greater inclination to offer an excuse. Here's the question I said in some...there might be a question in all of that. When you arrived at the realization that juveniles tend to commit crimes around other juveniles, maybe encouraged by other juveniles, the peer pressure, what did that do in terms of the way you would defend a specific juvenile, if anything? [LB44]

DENNIS MARKS: Well, a lot of times it's in context of sentencing, which in juvenile court is called disposition. So we get into suggestibility. Sometimes we will have psychological evaluations where we will have someone analyze that very thing. One of the things they talk about as far as mitigating is a comprehensive mental examination. And I think that is one of the things that you can have someone analyze so that you can present to the sentencer to help them understand the impact of this. [LB44]

SENATOR CHAMBERS: I know that where adults are concerned, if two are involved in a murder, if the triggerman wins the race to the prosecutor, the triggerman can get life and the accomplice who didn't pull the trigger can get death. And I've read of cases, several of them recently, where prosecutors who presided over cases like that, they've gotten older and they say, that's not right, and they will actually intervene to try to keep the death sentence from being carried out on the nontriggerman, whereas the triggerman is now out of jail; but they haven't been successful. Do they have any of that race to the prosecutor in the juvenile system where if one will tell on the others, it gets consideration for that? [LB44]

DENNIS MARKS: No. [LB44]

SENATOR CHAMBERS: Oh, okay. [LB44]

DENNIS MARKS: Not in juvenile court. But the peer pressure aspect, there's a social aspect to it. And when juveniles are committing crimes, the peer pressure acts as a way of getting attention, a way of getting peer approval, avoiding rejection. And some of that is in, you know, those briefs, those amicus briefs, because that's where a lot of the information that I'm bringing came from. [LB44]

SENATOR CHAMBERS: Does it carry any weight during the sentencing process, those considerations? [LB44]

DENNIS MARKS: Are you talking in juvenile court? [LB44]

SENATOR CHAMBERS: Say it again? [LB44]

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DENNIS MARKS: In juvenile court or in adult court? [LB44]

SENATOR CHAMBERS: Oh, juvenile court. [LB44]

DENNIS MARKS: It does. They look at the totality of the circumstances, and it's always the best interests of the child in juvenile court. [LB44]

SENATOR CHAMBERS: And, I mean, judges will take those as mitigating circumstances and hand out a less harsh sentence if those elements are present, or doesn't it make any difference when the sentence is handed down? [LB44]

DENNIS MARKS: I'm going to use a quote that my...the particular judge that I...in the courtroom that I sit in. And his phrase oftentimes is: It seems that when a group of boys get together, their collective IQ drops 50 points. So is it looked at? Absolutely. Is it considered? Absolutely. [LB44]

SENATOR CHAMBERS: Okay. That's all that I would have. Thank you. [LB44]

SENATOR LATHROP: Senator Seiler. [LB44]

SENATOR SEILER: Thank you, Mr. Chairman. Very close to what Senator Chambers was talking about is a consideration of sentencing in adult court. Is it still the law of aiding and abetting gets the same sentence as the perpetrator? [LB44]

DENNIS MARKS: Yes, I believe so. [LB44]

SENATOR SEILER: And the same thing is true of a felony murder case? [LB44]

DENNIS MARKS: Yes, I believe so. Yes. [LB44]

SENATOR SEILER: Okay. If we made those as elements of examination during a sentencing mode for a district judge, would we have to change the law on aiding and abetting or felony murder to make that a consideration? [LB44]

DENNIS MARKS: I think you want to look at the felony murder. If you look at Justice Breyer's concurrence in Miller, he talks about...and one of the mitigating factors is the participation in the offense. So I think that is something that perhaps maybe you will and maybe you won't, it might be part of the mitigating circumstances that a judge has to consider. [LB44]

SENATOR SEILER: And in both of these cases, aiding and abetting and felony murder, you don't have to be the perpetrator... [LB44]

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DENNIS MARKS: No. [LB44]

SENATOR SEILER: ...and you're going to be facing a first-degree murder case. [LB44]

DENNIS MARKS: Right. Correct. But part of the... [LB44]

SENATOR SEILER: But you said part of that decision, he discussed that? [LB44]

DENNIS MARKS: In the concurrence... [LB44]

SENATOR SEILER: Okay, I'll take a look at that. [LB44]

DENNIS MARKS: Justice Breyer talked specifically about the felony murder, so. [LB44]

SENATOR SEILER: Thank you. [LB44]

SENATOR LATHROP: Senator Ashford. [LB44]

SENATOR ASHFORD: Just very briefly. And maybe I'm...this is educational, excellent comments. And I agree with you. What I did not realize...actually Senator Lathrop had...we had a discussion about trauma in athletics when we passed a bill on...that Tom Osborne was a big supporter of, and we started to think about the impact. But this concept of trauma being observing, or a part of trauma leading to mental illness, leading to other difficult behaviors, that...to me...I mean, that was sort of what unlocked the door for me, thinking about that combination. Because I saw the trauma all the time in Senator Chambers' neighborhood, oftentimes, when there was violence. And I saw the trauma and then I knew...I knew that many of those kids committed other...I mean, I knew for an absolute fact that those kids then went...not necessarily those kids, but kids around them, young people, young juveniles, went out and committed a more violent act, because they lived with us so I knew when they did it, and they were associated with these other kids. So they were part of an extended family. It may or may not have been a gang or whatever it is, but the...it is amazing to me the connection because you could then see the end result. And then, you know, Dr. Pope's explanation to us a year ago, we had this little dinner and she got up and started talking about trauma, and I am thinking, oh yeah, trauma. And it leads to mental illness. I mean, it's just sort of like unpeeling the onion. Of course, there's a correlation. And to Senator Seiler's point, if you don't consider those things when you're looking at...if you don't consider those mitigators, you are literally...they may do it on the fly or they may do it as a matter of course, but they're not...but we have to put it into law, as Senator Seiler is suggesting, to make it clear what those mitigators are. Right? [LB44]

DENNIS MARKS: Under Miller, yes, you do. And... [LB44]

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SENATOR ASHFORD: Well, you have to do it anyway. But, I mean, how many have we missed, is the point. [LB44]

DENNIS MARKS: Well, I can tell you right now... [LB44]

SENATOR ASHFORD: And you don't have to answer it because you don't know, but. [LB44]

DENNIS MARKS: I can tell you right now, you missed the peer pressure one. That was specifically... [LB44]

SENATOR ASHFORD: Well, heck, I missed the trauma one. [LB44]

DENNIS MARKS: Well,... [LB44]

SENATOR ASHFORD: I mean, I... [LB44]

DENNIS MARKS: Excuse me. Trauma wasn't specifically listed. [LB44]

SENATOR ASHFORD: No, that's okay. No, I mean, I meant... [LB44]

DENNIS MARKS: But it's one that we need to put in there. [LB44]

SENATOR ASHFORD: Right. It needs to be a mitigating factor. [LB44]

DENNIS MARKS: It needs to be a mitigating factor. [LB44]

SENATOR ASHFORD: Because there's science that supports that. [LB44]

DENNIS MARKS: Absolutely. [LB44]

SENATOR ASHFORD: Okay. [LB44]

SENATOR SEILER: Would you, when you have more time to think about it, send Senator Ashford a list of mitigating circumstance? [LB44]

DENNIS MARKS: I can do that by Monday. [LB44]

SENATOR ASHFORD: Great. [LB44]

SENATOR SEILER: Thank you. [LB44]

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SENATOR ASHFORD: Nine o'clock? No, I'm just kidding. [LB44]

SENATOR LATHROP: We should...I will just throw this in and that is, if we're going to say trauma, then we should indicate more specifically what kind of trauma. Is that a physical trauma... [LB44]

DENNIS MARKS: No. [LB44]

SENATOR LATHROP: ...or is it the kind of trauma to the mind that happens from witnessing a sibling being shot by a drive-by or a...? [LB44]

DENNIS MARKS: I've got clients who suffer from politraumas, multiple traumas. I've got a client who witnessed his mother being raped at gunpoint, who witnessed his mother being, you know, physically abused, who witnessed his parents doing drugs. Those parents are now deceased. Those are four separate traumas, so. And the way it impacts juveniles, because they're still developing, it...look at the science. I'm... [LB44]

SENATOR LATHROP: All I want to do is make sure it's clear when we put it in the...as a criteria, what we're talking about. [LB44]

DENNIS MARKS: The last time I looked on the Web site with the adolescent, and the adolescent trauma and detachment center, they had a list of roughly, I believe, 12 different types of trauma. So perhaps it's a matter of leaving it open or being specific. [LB44]

SENATOR LATHROP: Well, we want to be specific enough so that it's not interpreted as physical trauma only. [LB44]

DENNIS MARKS: Right. Correct. I agree. [LB44]

SENATOR ASHFORD: Right. You don't have to just have some sort of witness to a shooting for this to be a mitigator. I mean, you...okay. [LB44]

DENNIS MARKS: Correct. You can be a victim or a witness. [LB44]

SENATOR ASHFORD: Right. Right. Thank you, Senator Lathrop. [LB44]

SENATOR LATHROP: Very good. Thank you, Mr. Marks. [LB44]

DENNIS MARKS: Okay. Thank you. [LB44]

SENATOR LATHROP: Next proponent. Welcome to the Judiciary Committee. [LB44]

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JENNIFER KEARNEY: Thank you. Chairman Ashford, members of the Judiciary Committee, my name is Jennifer Kearney, J-e-n-n-i-f-e-r K-e-a-r-n-e-y, and I've been asked to come and testify today due to my experiences working with a juvenile who was accused of a homicide in 2007. I don't have a written copy of my testimony because if I end up sounding like an idiot I don't want there to be a transcript out there of that, and I can't do anything about your video. But, in 2007, I was lucky enough to participate in the case of State v. Ochoa in Lincoln County, Nebraska, with Robert Lindemeier. Representing juveniles who are charged with homicide cases...or homicide offenses, is particularly challenging and provides a particularly complex situation for the defense attorney. Alisha Ochoa was 15 years old at the time that she was accused of this act when she was accused of participating in conjunction with her boyfriend who was a 19-year-old. She was arrested three days after. She was interrogated. She gave a statement to the police indicating that she was not involved, and the words that she thought would set her free ended up becoming her lock and key for 11 months. During the 11 months that we prepared for trial, I spent virtually every single day with Alisha. I cannot tell you how difficult it is to explain to a 15-year-old child heady concepts like hearsay and self-incrimination. I cannot tell you how difficult it is to explain, beyond a reasonable doubt. And more than that, I cannot tell you how difficult it is to get them to understand the long-range consequences that come from these types of charges. Luckily, Alisha was acquitted; but for 11 months she had no real conception of what was coming towards the end of the road for her. One of the other reasons that I wanted to come and testify today is the purpose and the importance of mitigation, which I know LB44 plans to address. During the course of our trial...or during the course of our preparation for trial, we received a lot of roadblocks from the prosecution saying that most of the evidence that we wanted to present that would be mitigation wasn't relevant. Luckily, we had a judge who allowed us to present it during trial. But mitigation is extremely important. Mitigation is an opportunity for defense attorneys not only to present to a judge or a jury those factors that have influenced their clients' lives but it's also an opportunity for humanizing and empathizing our clients and humanizing and empathizing juvenile offenders; and nowhere in the system is it more important to humanize and empathize a defendant than when we're talking about children. And with that I'll answer any questions that you may have. [LB44]

SENATOR LATHROP: Great. Thank you. I see no questions. [LB44]

SENATOR ASHFORD: Other than I'm glad Senator Seiler asked me the question because I think he's right on, isn't he, talking about mitigators. We've got to really be clear. [LB44]

JENNIFER KEARNEY: Absolutely. And I think one of the benefits to LB44 mentioning the process of mitigation, the importance of it, I think there are a lot of judges out there that don't necessarily see mitigation as relevant. And in public defense offenses, particularly, there's not that funding for mitigation experts. So by putting this language in

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there it will encourage judges I think to help defense attorneys obtain those experts and to obtain the funding for it as well. [LB44]

SENATOR LATHROP: Well, that's an important consideration. I see no other questions. Thank you for your testimony. How many more proponents do we have here to testify? Keep them up for just a second. One, two, three, four, five, six, seven, eight. Okay, very good. Welcome to the Judiciary Committee. [LB44]

PATRICK CONDON: Thank you, Senator. Members of the committee, my name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Chief Deputy Lancaster County Attorney. I am here on behalf of the Nebraska County Attorneys Association in support of Senator Ashford's bill. I think due to the ruling in the Miller case, this was a necessary amendment to our laws that needs to be made. That being said, I would state that the association is not in favor of the amendment offered by Senator Ashford. The association does feel that that term of years needs to be a longer term of years. As Senator Coash noted, without a minimum mandatory sentence any sentence such as the 20-to-life as what Senator Ashford had in his amendment does basically facilitate or does mean a 10-year sentence. With Senator Council's amendment to that, to the good time law, that actually is even reduced even further under the current statutes as they are. When the association looked at the other crimes that are on the books and what the minimum mandatory schedules are on those, we have sexual assault of a child which is a 1B felony. It carries a minimum mandatory of 15 years-to-life. Sexual assault of a child, second offense, is a 25 minimum mandatory-to-life sentence. We have drug charges that carry mandatory minimums of 5...3 and 5 years. There are also drug charges that have a minimum of 20 years-to-life under a 1B sentencing category. You also have your firearms by a prohibited person, both 1D and 1B felonies; and habitual criminals, which carry a possible penalty of a minimum mandatory 10 years-to-60 or a minimum mandatory 25-to-60 depending on the crime. It is the association's position that the minimum mandatory in a 1A juvenile taking a life is 60...minimum mandatory 60 years-to-life. Again, the other crimes that I mentioned did not associate or were not associated with the taking of a life necessarily, and the Legislature felt it necessary to make mandatory minimums in regards to those crimes. So with that, it is again the association's position that the minimum mandatory, filling in the numbers here on the original bill, should be a minimum mandatory 60 years-to-life imprisonment. And with that I would have nothing further. [LB44]

SENATOR LATHROP: Senator Chambers. [LB44]

SENATOR CHAMBERS: Did you say your last name was Condon? [LB44]

PATRICK CONDON: Condon, sir. [LB44]

SENATOR CHAMBERS: Mr. Condon, how long have you been a county

attorney...assistant county attorney? [LB44]

PATRICK CONDON: Approximately 24 years, sir. [LB44]

SENATOR CHAMBERS: During those years have you observed what happens in the Legislature with reference to amendments to the criminal law? [LB44]

PATRICK CONDON: Yes. [LB44]

SENATOR CHAMBERS: Are you aware, from your observation, that there's never been a comprehensive review of these various crimes that you're mentioning and the punishments to bring about some kind of rationality among them; but rather, the changes come in spurts? When they say there's a war on drugs, then suddenly there are heavy penalties for drug crimes and right on throughout. Have you noticed anything like that happening? In other words, a political engine that drives the kind of sentences that this Legislature will attach to offenses? [LB44]

PATRICK CONDON: I would say I've observed those, Senator. Whether that's due to certain... [LB44]

SENATOR CHAMBERS: Well, the Attorney Generals have done it...Attorneys General have done it every since I've been here and before. Whether it was Stenberg or Bruning or whoever they were, they respond to political winds, and you know that. You won't...you may not be conscious of it but I know what you must know if you sat down to think about it. Those crimes and punishments were put on the books with adults in mind. Are you aware of that? [LB44]

PATRICK CONDON: Those are for adult...they are adult sentences. Yes, Senator. [LB44]

SENATOR CHAMBERS: Do you think when sexual assault of a child was put on the books, a 12-year-old boy raping an 8-year-old girl was in the Legislature's mind? [LB44]

PATRICK CONDON: No. [LB44]

SENATOR CHAMBERS: So you're going to take a punishment scheme fashioned for adults and say we should apply it to children when you've heard about the scientific evidence which simply confirms our common sense that children are not merely adults of lesser growth or lesser size. You know there's a difference between children and adults, don't you? [LB44]

PATRICK CONDON: There's a difference between children and adults, Senator. [LB44]

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SENATOR CHAMBERS: And you also know that children don't have the level of maturity and understanding that adults have. You know that too, don't you? [LB44]

PATRICK CONDON: Senator, in the 24 years, I would say that is not necessarily true. I know certain adults that to me don't have the maturity of certain juveniles that I've seen. And I think that's normal. [LB44]

SENATOR CHAMBERS: Then what you do is downgrade how you're going to treat the adult. The fact that an adult might have the mentality of a child does not mean conversely that a child has the mentality of a sane adult. Here...I want to ask you this question to be sure I understood you. You say that children are as mature as adults. Is that what you're saying? [LB44]

PATRICK CONDON: What I'm saying, Senator, is you asked me if I have seen in my years the difference between adults and children, and I have. But it doesn't necessarily mean that all the time...I mean, I've seen some very mature 16- and 17-year-olds, which we are also talking about--not just 12- and 13-, but 16- and 17-year-olds--and I've seen some very immature 21- and 22-year-olds, Senator. [LB44]

SENATOR CHAMBERS: Why did you say girls? [LB44]

PATRICK CONDON: Pardon me? [LB44]

SENATOR CHAMBERS: Why did you say girls? Why didn't you just say juveniles? You said I've seen some very mature, and so forth, girls. [LB44]

PATRICK CONDON: If I said that, Senator, it should have been girls and boys...men and women. [LB44]

SENATOR CHAMBERS: But you thought about girls. Girls were the ones you were thinking about, not that you mean...I'm not saying you would do anything to a girl. But there is a tendency to talk about a mature-appearing girl rather than boy. Because men will say I thought she was older because she had on lipstick and eye shadow and a short dress. But if you had a daughter like that at home we wouldn't say it. Now I want to get past that because the county attorneys sent you here to talk to us because you understand more about this than any other county attorney; otherwise they wouldn't have sent you here. Is that correct or it's not correct? [LB44]

PATRICK CONDON: Senator, I am here on behalf on the County Attorneys Association with... [LB44]

SENATOR CHAMBERS: Did they send you here because you know more about this subject you're testifying on than any of the other county attorneys? [LB44]

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PATRICK CONDON: I wouldn't say that I'm more familiar with this...I would say I was as familiar as any of the other ones. [LB44]

SENATOR CHAMBERS: Are there any with a greater awareness and understanding of this subject than you? [LB44]

PATRICK CONDON: Senator, I would... [LB44]

SENATOR CHAMBERS: Let me ask it a different way. Were you selected by the County Attorneys Association on the basis of their believing that you know more about this subject than anybody else in their organization? Is that why you were selected? [LB44]

PATRICK CONDON: I would say that is not why I was selected, sir. [LB44]

SENATOR CHAMBERS: Well, why were you selected? [LB44]

PATRICK CONDON: I was selected because I could come in here and I could give a meaningful representation of what the Nebraska County Attorneys Association is. I mean, Senator, as you would know, Mr. Kleine, the county attorney in Douglas County, just by sheer volume of the amount of cases that he handles in regards to murder cases is probably more versed than I. [LB44]

SENATOR CHAMBERS: So there are different levels...differing levels of understanding and competency in this area based on... [LB44]

PATRICK CONDON: I don't think there's any...I don't think there's different levels of understanding and competency, sir. If you're saying, am I the most capable of this; I am as competent as others. [LB44]

SENATOR CHAMBERS: Then why did you mention the number and volume of cases in a certain county? That has nothing to do with anything based on what you're telling me. If you handle one of these cases in your life and somebody else handled 20 a day, that one who handles 20 a day is not any more capable than you who had one in your life. [LB44]

PATRICK CONDON: May not be more capable and may understand. [LB44]

SENATOR CHAMBERS: They might be? [LB44]

PATRICK CONDON: They may understand... [LB44]

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SENATOR CHAMBERS: They would, did you say, or they don't? [LB44]

PATRICK CONDON: I said they may understand it better, sir. [LB44]

SENATOR CHAMBERS: Okay. Would you... [LB44]

PATRICK CONDON: The same way as a junior senator would maybe not be as versed in these issues as you are, sir. [LB44]

SENATOR CHAMBERS: Okay. Then here's what we can say: that those with more experience, more involvement, have a greater understanding of the subject matter. So if there are people who have been in the world longer, had more experiences, they would know more about things than those with lesser time in the world and lesser experience. And you can see where I'm going and you can deny it if you want to, but everybody in this room understands where I've gone. That those with more understanding, more maturity, more years, will be held more culpable than others. You're a lawyer, aren't you? [LB44]

PATRICK CONDON: Yes, I am, sir. [LB44]

SENATOR CHAMBERS: Does your...do you know what the lawyer code of responsibility is? [LB44]

PATRICK CONDON: Yes. [LB44]

SENATOR CHAMBERS: Does it say that lawyers are held to a higher standard than ordinary people, than ordinary citizens? Are you as a lawyer held to a higher standard? [LB44]

PATRICK CONDON: As to what, sir? [LB44]

SENATOR CHAMBERS: Ethical conduct. It says you are. [LB44]

PATRICK CONDON: Yes. [LB44]

SENATOR CHAMBERS: It just says that. Then I know more about that than you do and I'm not a lawyer. Are judges held to a higher standard even than lawyers? [LB44]

PATRICK CONDON: Yes. [LB44]

SENATOR CHAMBERS: Yes, they are. Why? Because of their status, their experience, and what they do. So when it comes to adults and we're going to say you are held to a higher standard, it means, like Jesus said--because if you're not a Christian now you

probably were at some or other--where much is known, much is required, and where lesser is known, less is required. And children are not held to the same standard as adults. And you know what Jesus...you don't...you may not know so that's a rhetorical question, and I start a statement with that. Do you know what Jesus said? He was playing with these little children, and his disciples, older guys like you and me who didn't understand anything, we like the spotlight, we want Jesus to be up there healing people and doing miracles and making profound statements that draw attention to us so we join in his reflected glory. And they said: Take those little children away. And Jesus said, (bangs desk) wait a minute. Unless you become as a little child you'll not enter the kingdom of heaven. Suffer the little children to come unto me, for of such is the kingdom of heaven. Then he said something else, not with reference to adults: If a man would offend against one of these, my little ones, it were better for him that a millstone be hanged about his neck and he be drowned in the depths of the sea. Jesus never said that about an adult. Jesus made a distinction between children and adults. And there are people who will read what Jesus said, who will go to church, who have children of their own and will know that there's a difference; but when it comes to meting out punishment, then suddenly all that goes out the doors. And they sent you here probably because you're more hardhearted and could say with a straight face, 50 years-to-life is what this child ought to get, even though there are adults who commit murder and they're not given 50 years-to-life. You probably have been involved in plea deals where the one who won the race to the prosecutor's office got a deal. And if the law is being just and the punishment is because of what was done, there should be no such thing as a plea deal. If Senator Lathrop and I are equally culpable but I beat him to you and say I'll rat him out, you say rat him out and we'll make a deal. So you don't look at the fact that I am as vicious, as atrocious in my conduct as he was, and maybe I was the ringleader. But you guys who are here telling us punish these children, will cut a deal with me and let me out early. And you know why I can do this? Because I know of cases where it has happened. I've been against the death penalty all of my life when I've been conscious, and I know of people who committed horrendous murders, who have dismembered bodies...who have dismembered bodies, wrapped them in butcher paper and threw the parts in a reservoir. Are you aware of that case? Had you read about it? Okay, these are the kind of things I'm aware of. And deals were struck. No death penalty. No life sentence. No 50 years-to-life. Grown men committing vicious murders of women will be allowed to be charged with and convicted of manslaughter. What's the minimum for manslaughter? [LB44]

PATRICK CONDON: One to 20, sir. [LB44]

SENATOR CHAMBERS: And what's the maximum? [LB44]

PATRICK CONDON: It's a minimum of 1 and a maximum of 20 years, sir. [LB44]

SENATOR CHAMBERS: Now, a child you think should get 50 years to life? That's what

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you said, isn't it? That's what your organization wants us to do? [LB44]

PATRICK CONDON: Yes, sir. For first-degree murder, sir... [LB44]

SENATOR CHAMBERS: And you feel comfortable... [LB44]

PATRICK CONDON: ...which is what we're talking about. We're not talking about manslaughter. We're talking about first-degree murder. [LB44]

SENATOR CHAMBERS: And you feel comfortable...well, first-degree murder...first-degree "schmurder" is what the county attorney charges. If you don't charge first-degree murder, then first-degree murder is not tried. If you strike a deal with me, couldn't the facts and aggravating circumstances warrant you seeking a death penalty but you cut a deal with me and let me plead guilty to something lesser than first-degree murder? Doesn't that happen? Come on. [LB44]

PATRICK CONDON: I'm not aware of it, sir. I'm not saying it doesn't happen. I'm saying... [LB44]

SENATOR CHAMBERS: Oh, you don't know about plea deals, plea down from first-degree murder to a lesser offense? You're not aware of that? And you've been a... [LB44]

PATRICK CONDON: I'm aware of plea agreements, sir. [LB44]

SENATOR CHAMBERS: But not pleading down from murder, first-degree murder to a lesser offense? [LB44]

PATRICK CONDON: Sir, the way... [LB44]

SENATOR CHAMBERS: You don't know that? [LB44]

PATRICK CONDON: Sir, the way...Senator, the way that you couched your argument, sir, I think you are doing a disserve to all the county attorneys. [LB44]

SENATOR CHAMBERS: Forget the argument. You came here. You were paid to come here. I'm asking you this question to get everything else off the board... [LB44]

PATRICK CONDON: Sir, and I... [LB44]

SENATOR CHAMBERS: ...and let you focus on the question. [LB44]

PATRICK CONDON: Senator, and I'm trying... [LB44]

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SENATOR CHAMBERS: You told me you're not aware of plea agreements that drop from first-degree murder to a lesser sentence. [LB44]

PATRICK CONDON: Not... [LB44]

SENATOR CHAMBERS: And nobody is going to stop me. This is serious. You're a grown man, I'm a grown man. You were paid to come here. You were sent here. You're not going to answer the question? Tell me you're not going to answer it and I'll stop asking. [LB44]

PATRICK CONDON: Senator, I answered your question. [LB44]

SENATOR CHAMBERS: So you're aware of those kind of plea deals? [LB44]

PATRICK CONDON: I'm aware of plea agreements where a first-degree murder charge has been dropped down to a second-degree, yes. Under certain circumstances that you previously mentioned, no. [LB44]

SENATOR CHAMBERS: Like what? [LB44]

PATRICK CONDON: Like where the person that is more responsible gets a deal and the less responsible gets a first-degree murder conviction. [LB44]

SENATOR CHAMBERS: So you mean the one who wins the race to the prosecutor's office. [LB44]

PATRICK CONDON: Correct. [LB44]

SENATOR CHAMBERS: Now you don't think that happens or you're saying you're not aware of it? [LB44]

PATRICK CONDON: I'm not saying it doesn't happen, Senator. I'm saying that I am not aware...I have personally not been involved in that type of a case. [LB44]

SENATOR CHAMBERS: We're not talking about what you have done. [LB44]

PATRICK CONDON: Senator,... [LB44]

SENATOR CHAMBERS: I'm asking, are you aware of that? [LB44]

PATRICK CONDON: Senator, and you've also made comments in regards to grown men being...getting 50-to-life on a murder sentence, not on a first-degree murder, and

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that's what we're talking about here is first-degree murder. First-degree murder is a life sentence, sir. That's it. [LB44]

SENATOR CHAMBERS: You don't follow the question that I asked you at the time I asked it, and that's why I would try to focus it on one thing. And before people get to feeling sorry for you, you're not a child. You're not facing life in prison, and you can elicit sympathy and all I'm doing is talking to you. And you're a grown man paid to listen to everything I say to you. When you come here, you don't run anything. We run it. And they might think I'm rude. They might think I'm out of line. They might think I shouldn't talk like this. But I'm talking about what is to be done with children and you're sitting there telling us we ought to forget this 20 year-to-life because that's too lenient and make it 50-to-life. And I get exercise. I'm not like my colleagues. I'm more like Jesus. When I see these little children treated in this fashion, it gets on the wrong side of me. And I cannot abide somebody who calmly says, well, our organization says it should be 50 years-to-life. You need to know that there are people who don't appreciate that, who don't like it. And maybe you'll tell them next time, I don't want to go testify before the Judiciary Committee because this is what they're going to get when they say what you said. And remember, Mr. Condon, you can respond to anything I say now, because I don't believe in it being a one-way street, and I'll listen to whatever you want to say to me in response or beyond what I said to you. I can take it. [LB44]

PATRICK CONDON: And so can I, Senator. And what I would say, again I would just reiterate our position that I've previously stated. Again we are talking here of first-degree murder, only first-degree murder, and the scheme of a 20-to-life where it is not...there is no minimum mandatory sentence to that, I think the association does not feel that that is a sufficient enough sentence. You know, we also...you know, Senator, we have to talk to the victims. We have to talk to the victims' families in these matters. And we have to...you know, when they're asking us, well, what is the sentence going to be? And we say, well, you know, under the amendment it's 20 years-to-life, but that doesn't mean 20 years; that means, well, 10 years...well, there's reductions even to that 10 years. So, you know, we have to look at that, Senator. I respect your position. I disagree with it. And the association, as I said, we feel that that number needs to be higher, sir. [LB44]

SENATOR CHAMBERS: Are the views you expressed those of the association only, or do you share them personally also? [LB44]

PATRICK CONDON: Sir, those are...I am here as a member of the association. [LB44]

SENATOR CHAMBERS: I didn't understand you. [LB44]

PATRICK CONDON: I am here as a member of the association. [LB44]

SENATOR CHAMBERS: I'm going to say like George Bush said about Vladimir Putin:

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While I've talked to you I've looked into your eyes. I probably studied you more than you've studied me, and I see a better man inside of you than the words that came out of your mouth. And that's why I wanted the record to be clear that you are here expressing the views of your organization and that's what you represented yourself as being and doing, and that's the way I'm going to accept it. You agreed to do a very hard and difficult job, and you were dumped on as a result, and that's why they sent you here instead of coming themselves. But I do appreciate the facts that you did come, that we had the exchange, and I'm also glad that you made it clear to everybody what the county attorneys feel. And it gives us some insight into the organization, but not necessarily you, because if you decided to leave the side where you are and become a public defender, then I'd venture to say that we would have a different conversation from the kind we're having today and you would testify on a different side of the bill. But today, for everybody's benefit, they do support the bill and that's because they know that something has to be done in view of that Supreme Court decision. [LB44]

PATRICK CONDON: Absolutely, sir. [LB44]

SENATOR CHAMBERS: And I don't want anybody to think that there's hypocrisy here because you say you support the bill but you disagree with that part of it. It's something that more or less has to be done by anybody who is a responsible practitioner of the law. When the Supreme Court hands down a decision of this kind and the state is out of step, the state has a responsibility to come into compliance with that decision. And that's how the county attorneys can come here supporting the fact that we're bringing a bill to address it but they can disagree completely with the way we're addressing it, more or less. Right? [LB44]

PATRICK CONDON: More or less, Senator. [LB44]

SENATOR MCGILL: (Laugh) [LB44]

SENATOR CHAMBERS: Okay. Thank you very much. [LB44]

SENATOR LATHROP: I do want to clarify one thing. Did you say your position was 50 or 60? [LB44]

PATRICK CONDON: Sixty, sir. [LB44]

SENATOR LATHROP: Okay. [LB44]

SENATOR ASHFORD: Sixty to life? [LB44]

SENATOR LATHROP: Okay. [LB44]

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PATRICK CONDON: Mandatory minimum. [LB44]

SENATOR CHAMBERS: Oh, so he's harder than I thought. [LB44]

PATRICK CONDON: Excuse me. Mandatory... [LB44]

SENATOR ASHFORD: Well, but... [LB44]

SENATOR CHAMBERS: I gave him (inaudible). [LB44]

SENATOR LATHROP: You kept saying 50 and I thought I heard him say 60. [LB44]

SENATOR ASHFORD: But...how do you...just let me ask. And I'll...how do you...how could...and I respect...and I know that in talking to Don Kleine, that was going to be his position. It's...how do you read the Miller decision where it talks about the length of sentence of a juvenile versus the length of sentence...and mentions it right in the Opinion as a factor in coming up with a different criteria, it's right in there, and then we go to...and I said to Don, 60-to-life is life. So when you talk about...how do you get there...and we can talk about it later, I don't want to prolong this. But that, I guess rhetorically my question would be, I read what they said, and what they said is that when you sentence somebody to a length of years that is that significant, that you are...or you have to think about the fact when you make a sentence that these juveniles are being sentenced at age 15 and 16 as opposed to 25 or 30. And, at least, whether or not that's...that's in the Opinion, and I don't know how else to read it. And I don't...and that's fine. It's more of a...I don't need to have you have to answer that. But that really is a big concern. It's right in the...it's in the Opinion so you have to give meaning to those words somehow. And 60 doesn't, and I think it's clear, as Daniel Gutman said, that Iowa 60-year thing is gone anyway. So why would we pass something we know is unconstitutional...or very likely is unconstitutional? But I appreciate your testimony. Thank you. [LB44]

SENATOR LATHROP: Well, as long as you said that, let's give him an opportunity, because I see Mr. Riley sitting here. I'm sure we'll get an opinion from him on whether 60-to-life is constitutional or not constitutional. Take 30 seconds, if you can, and tell us your thoughts on the constitutionality of 60-to-life, because that is a concern. If it effectively becomes life and we're trying to be too cute with our legislation, then we'll be back here in two years. [LB44]

PATRICK CONDON: Well, I think, you know, if you look at the Iowa scheme and the way they did that, I think what it says is it needs to be a meaningful review. And I think for the Iowa scheme, where the governor just set it, it's automatically a 60-to-life. That wasn't a meaningful review. Under this statute, under this amendment...or the position of the association is the judge still can have a meaningful review. You know, 60-to-life, if

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you're 16 years old, you're out at 76. You still have...you know, there's still a life expectancy there that you can enjoy with. [LB44]

SENATOR ASHFORD: That's a reflective...(laughter). [LB44]

SENATOR LATHROP: Okay. [LB44]

SENATOR MCGILL: Still out (inaudible). [LB44]

SENATOR LATHROP: So you've laid it out exactly the way I think we'll hear these guys lay it out, and you just probably come to a different conclusion,... [LB44]

SENATOR MCGILL: I'm not arguing in favor of (inaudible). [LB44]

SENATOR LATHROP: ...having a couple years left on your life expectancy makes it meaningful. Okay. All right. Hey, we're running a hearing here. Okay, thank you, Mr. Condon, and next proponent. [LB44]

SENATOR CHAMBERS: But while he's getting ready, can you imagine a fresh-faced 15-year-old going to prison and coming out looking like me? [LB44]

SENATOR MCGILL: (Laugh) [LB44]

SENATOR ASHFORD: I knew that was coming. (Laugh) [LB44]

SENATOR LATHROP: Welcome. [LB44]

THOMAS RILEY: Thank you, Mr. Chairman, Mr. Vice Chairman, members of the committee. My name is Thomas Riley and I'm the public defender in Douglas County, and I'm here also on behalf of at least 14 of the inmates that are currently doing life sentences without parole. What I've heard and what I've heard talked about here you could probably keep me here for hours, because basically what's going on here is we're trying to fix something that we screwed up. And it took the United States Supreme Court to tell us that it's a screw-up even though many of us have been saying it's been a screw-up for a long time. When I read Miller v. Alabama and when I read the proposed legislation with the mitigating circumstances that are set forth, I thought to myself, well, these are things that should be germane to every sentencing. What's happened is we've said in first-degree murder cases none of this makes any difference. I did a sentencing the other day when I said it was...the penalty was life without parole. I said, this is a total exercise in futility; what do you want me to say? Anything I say is irrelevant. You can't do anything, Judge; you have to give a life sentence. So what we're trying to do is unscrew that mess. And I think that the bill that is presented here goes a long way to rectifying some things that are terribly wrong with what has gone on. And I've been here

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for...this is my 38th year in the public defender's office, and I don't like to talk about legislation by anecdote. I've been to a number of these hearings where I hear people come up and say this is what happened to me, this is what happened to me. And I say, well, that's really not the way to run the ship. What we have to do is think of the policy. And I've heard and we've presented evidence in cases about just the types of things that the expert witnesses have presented to you, but they fall on deaf ears. We have a system that says...the Legislature has said if you are charged with first-degree murder and you're under 18, you can go to juvenile court. You never said, as a Legislature, you can't go to juvenile court. Try it sometime. Have a motion to transfer to juvenile court with first-degree murder and see how that flies, because they're going to say, well, we only have X amount of years till they're 19 and then we lose jurisdiction. So that's a canard. The felony murder rule is absolutely a factor that comes in...that should be considered in this bill, because as has been indicated--and under aider and abetter, as well--people who are not the most culpable end up doing the same or greater sentences than others. I can tell you there's one kid in prison now doing life without parole who one of the defendants, who was the shooter, beat the case at trial and is acquitted on self-defense. His codefendant, who is not the shooter, at a separate trial got convicted and is doing a "frigging" life sentence, because there's no bill like this. And the judge says, I can't do anything, you're going to go to prison for life. And let there be no mistake...by the way, with proponents like we just heard, you don't need opponents. And let there be no mistake, the prosecutors want effectively...are asking you, right here, effectively give them life without parole. That's what they're doing. Give them 80 years. If you've been watching the sentences that have been doled out in Douglas County on homicide cases, whether it's first or second, 80 to 120. Fifteen-, 16-, 17-year-old kids, 80 to 120, 100 to 150 years in prison. Those are life without parole sentences. And I can tell you that if the amendment that is suggested by the County Attorneys Association is adopted or anything similar to that, you're going to end up with more litigation and more litigation, because a rose is a rose by any other name. And if you're doing 40, 50, 60 calendars, you're doing life in prison and let's stop the nonsense. What this is saying is because juveniles... [LB44]

SENATOR LATHROP: Tom, I've got to throw a question. [LB44]

THOMAS RILEY: Okay. [LB44]

SENATOR LATHROP: Why don't you address the constitutionality or your thoughts on the constitutionality of the 60-to-life. [LB44]

THOMAS RILEY: Well, that's exactly the point. What Miller v. Alabama says is that there has to be an individualized sentencing hearing, which we don't have now, because nothing matters. [LB44]

SENATOR ASHFORD: Well, there's nothing to consider. Correct? [LB44]

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THOMAS RILEY: That's right. [LB44]

SENATOR ASHFORD: Okay. [LB44]

THOMAS RILEY: And secondly, that there has to be a...the judge has to have the option of a meaningful...give the defendant a meaningful opportunity for parole. Okay? Well, a meaningful opportunity for parole under the County Attorneys' definition is 72 years old and beyond. So as I said, it's quite apparent...and there are some cases that are in the hopper right now in other states that are dealing with precisely this question by saying don't tell me that you haven't violated the spirit of Miller v. Alabama when you've given someone 100 years in prison and say, well, gee, they'll be eligible for parole in 85 years or 82 years. So I have no doubt in my mind that all this would do, if you adopt what the County Attorneys suggest, is spawn more and more litigation. The only other thing I wanted to add briefly is I do have... [LB44]

SENATOR ASHFORD: Do you have something else to add? [LB44]

THOMAS RILEY: I'm sorry? [LB44]

SENATOR ASHFORD: Go ahead, Steve. [LB44]

SENATOR LATHROP: When that red light goes on, we've got to ask you questions. [LB44]

THOMAS RILEY: Ah. Well, the Supreme Court lets me keep talking. [LB44]

SENATOR LATHROP: Otherwise, everybody else back here is going to think they can come up here and just keep rolling. [LB44]

THOMAS RILEY: All right. Okay. [LB44]

SENATOR LATHROP: But let me ask this question if you wouldn't mind answering it. What should this bill do or not do? What can...is it our problem to address what happens to the juveniles that are now incarcerated who have been given the life sentences? [LB44]

THOMAS RILEY: Yes, I think it is. [LB44]

SENATOR LATHROP: Okay. Do we address it in the bill or not address it, or what's the better course, in your judgment, if you've got a thought? [LB44]

THOMAS RILEY: I think the most direct approach is to address it in the bill and to make

them eligible for parole. There may be a difference in opinion... [LB44]

SENATOR ASHFORD: Tom, how do you frame that then? [LB44]

THOMAS RILEY: I would simply say that there is a new provision on parole eligibility for 1A felons, and that you attempt to make it retroactive. Now, will...could that spawn some litigation? I'd be a liar if I didn't tell you it may. It may. But Senator Chambers addressed that issue in the context of the death penalty, and I think he's spot-on. I think that the litigation was right. Plus it would give a sense of what the Legislature's intent is, and that is...I mean, what kind of a world do we live in where people who...? One of these people here's brother has been in prison for 40 years...42 years for something he was accused of doing when he was 15. I mean, do you think maybe it's time to review and say, it's time for parole. So I do think that it can be done. Like I said, there... [LB44]

SENATOR LATHROP: Do we put in here that each one of those people who were sentenced to life in prison without the possibility of parole while they were juveniles shall be resentenced and subject to whatever range we develop in this bill of Senator Ashford's? [LB44]

THOMAS RILEY: My position is that it should be addressed directly in the bill and that what would happen is then we would, if it's directed...if it's in the bill, we would bring one of the defendants up, have a sentencing hearing. If the state argues that it's improper and that it's a special legislation or come up with some other constitutional argument, then we litigate it. But to me it seems...historically, there have been cases that say if someone is doing a sentence and the Legislature reduces the sentence for the same offense, that those who are currently incarcerated do get the benefit of the lesser time. [LB44]

SENATOR LATHROP: And that happens without us mentioning it in the bill? [LB44]

THOMAS RILEY: It can. But I sure... [LB44]

SENATOR LATHROP: But these people are doing a sentence that's actually unconstitutional, aren't they? [LB44]

THOMAS RILEY: I'm sorry. [LB44]

SENATOR ASHFORD: I think we tried to mention it, and I'm not sure we mentioned it correctly is what it boils down. [LB44]

SENATOR LATHROP: These people that were convicted and given the life sentence, they are now doing a sentence that's unconstitutional. Something has to happen with them, right? [LB44]

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THOMAS RILEY: That's my...that's precisely right. That's exactly the analogy that Senator Chambers was giving with regard to the death penalty. That's precisely the point that we would be making. Yes. [LB44]

SENATOR LATHROP: Okay. Senator... [LB44]

THOMAS RILEY: And that they should be...they should have this benefit of the whatever the sentence reduction is that is determined by the Legislature. [LB44]

SENATOR LATHROP: Okay. Senator Seiler has got a question for you. [LB44]

SENATOR SEILER: Thank you, Mr. Vice Chairman. I'm a little in a quandary as to not the people that are going to forward this but the people that are being resentenced. Are they resentenced by the district judge that sent them to the prison or do they fall back under the Parole or Pardons or one of the other review positions? [LB44]

THOMAS RILEY: They would have to be resentenced by the district court. [LB44]

SENATOR SEILER: Do they still have jurisdiction? [LB44]

THOMAS RILEY: If you give it to them. [LB44]

SENATOR SEILER: (Laugh) Okay. [LB44]

THOMAS RILEY: Well, the answer is, just like in a postconviction, they still have jurisdiction. [LB44]

SENATOR SEILER: Okay. Fair enough. [LB44]

THOMAS RILEY: So. [LB44]

SENATOR LATHROP: Okay. Senator Chambers. [LB44]

SENATOR CHAMBERS: And the way...right now, as Senator Lathrop pointed out and you agreed and it's correct, they are serving an unconstitutional sentence. So, in effect, they have no sentence. So all we have to say in the law, something like that...we can make findings... [LB44]

SENATOR LATHROP: Okay. [LB44]

SENATOR CHAMBERS: ...you know, that this is being done pursuant to what the U.S. Supreme Court handed down. And in keeping with that, knowing that the current

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sentence is unconstitutional, any resentencing which occurs will be pursuant to the law that exists at the time of the resentencing. And the law at that time will be what we put in the bill and it's saying what everybody said but it's just saying it in a way that might be more acceptable... [LB44]

THOMAS RILEY: I think you're right. [LB44]

SENATOR CHAMBERS: ...under a legal analysis, and saying... [LB44]

THOMAS RILEY: Yes, I think you're right. [LB44]

SENATOR CHAMBERS: ...instead of saying we're going to reduce the sentence ourselves, we're not doing that. [LB44]

THOMAS RILEY: Yeah. Right, right. [LB44]

SENATOR CHAMBERS: We're just saying what you indicated, that there's a different standard now, But we'll say it in terms of when the resentencing occurs it will be in accord with the law in effect at the time of the resentencing or something along that line. [LB44]

THOMAS RILEY: Well, when we went through the Ring v. Arizona thing, the question was, is it a procedural change or a substantive change? And that determines retroactivity. And I think a pretty darn good argument could be made that it's a substantive change. And let there be no doubt about the unconstitutionality of it, because no sooner did Miller v. Alabama come out than the Attorney General and the Pardons Board wanted to do something to address it. And, in effect, give them what they said they were going to do, was give them life...an effective life without parole sentence. So there's no question that everyone understands that this is an unconstitutional sentence that they're serving and they have to address them as well as looking prospectively. [LB44]

SENATOR CHAMBERS: And they were violating the law by attempting to do even that, because they were acting outside their authority... [LB44]

THOMAS RILEY: I thought so. [LB44]

SENATOR CHAMBERS: ...in the way that they were doing it. And the case was well handled that brought that out. [LB44]

THOMAS RILEY: Thank you. [LB44]

SENATOR LATHROP: I do have a question for you. I'm looking at the life expectancy

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tables from the Social Security Administration. Okay? [LB44]

THOMAS RILEY: Yep. [LB44]

SENATOR LATHROP: As long as we're talking about it, the life expectancy of a newborn is 75...male is 75.38 years and a female is 80.43. Assuming that that's true and these are good life expectancy tables and the Social Security Administration is right, where is the...if it's not 20, where is the sweet spot or at what point do you think the range is low enough to not be constitutionally suspect? You said 60 is effectively not an option or it's still life without the possibility...effectively, possibility of parole. [LB44]

THOMAS RILEY: Well, I don't know the answer to that question. I'm a proponent of the bill as it's presented. The point is, if, in effect, you are not giving them a meaningful chance for parole. And I think if you read the case, they're talking about having some kind of a life,... [LB44]

SENATOR ASHFORD: Well, they said it, they said it, I think... [LB44]

THOMAS RILEY: ...you know, not being on dialysis at...for... [LB44]

SENATOR ASHFORD: ...didn't they, Tom? They... [LB44]

THOMAS RILEY: Yeah. Yes, they talk about that. Now, granted, it's in legalese, but I think you can interpret it to mean, hey look, this does what Miller v. Alabama, if it doesn't directly say, it certainly implies. This is a forward-looking bill that can avoid future litigation. It doesn't guarantee anything. It just says, you know what, when you're under 18 and you commit a heinous offense or convicted of committing a heinous offense, we're going to look at you after ten years and say have you matured to the point where we can put you on parole. You know as well I do, that the Parole Board is not going to be releasing people... [LB44]

SENATOR ASHFORD: At their first... [LB44]

THOMAS RILEY: ...willy-nilly... [LB44]

SENATOR ASHFORD: At their first... [LB44]

THOMAS RILEY: ...and probably at their first hearing. There's going to have to be some...we all saw Shawshank. [LB44]

SENATOR ASHFORD: (Laugh) [LB44]

SENATOR LATHROP: All right. Let the record reflect that...that's fine. [LB44]

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THOMAS RILEY: That you haven't? Oh, my. [LB44]

SENATOR LATHROP: No, no, no. Not at all. [LB44]

SENATOR SEILER: And that's supposed to be gospel? [LB44]

SENATOR LATHROP: All right. We're quoting movies. All right. Thanks, Tom. We appreciate your testimony. [LB44]

THOMAS RILEY: All right. Okay, thank you. [LB44]

LORAN SCHMIT: Mr. Chairman, members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I would like to speak here today about an actual case. If that's inappropriate, Senator, I would like you to just tell me now. [LB44]

SENATOR LATHROP: You can proceed. [LB44]

LORAN SCHMIT: Okay. I've been here before on the issue of a similar nature. But I have an instance where a young man was involved in a murder almost 40 years ago. He had an accomplice who was a year older than he was. The accomplice was an individual who committed the act of violence, and they then perpetrated a series of events which resulted in the man's death. The previous witness said that he had no knowledge of a plea bargain or an individual being allowed to testify against an accomplice and walk free or virtually free. In this instance, the person who committed the act of violence was allowed to testify against his accomplice. The one gentleman had money and he hired a lawyer, and the gentleman I'm referring to had a court-appointed attorney. The person who actually committed the act of violence was sentenced to six months at Kearney. The person I'm talking about was sentenced to life without parole. He has almost done 40 years. He has appeared many times before the Board of Pardons. I have appeared on his behalf. And not a member of this Board of Pardons but a previous member said, life means life, period. No consideration. Not the fact that he was 16 when the crime was committed, not the fact that his accomplice who swung the pipe and perpetrated the crime got six months at Kearney. He was...life was life. At the most recent parole hearing, which was almost three years ago, the Board of Pardons...or pardon me, the Parole Board, a member of Corrections testified eloquently on behalf of this gentleman. He said he was ready for release. The Board of Pardons voted no and said he could not come back for two more years. The point I want to make is this: that in this instance the gentleman who had the money to hire his own attorney was able to do so. They beat the man to the courthouse. What is most interesting is that the prosecutor offered the gentleman, my friend's attorney, a deal: involuntary manslaughter. You gentlemen know what that penalty would have resulted in. The attorney said, no, we won't take it; we can beat this. So the gentleman gets mandatory

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life without parole. Now I'm not going to talk about the capability of the defense attorney but I have never spent a day in law school, but I know the difference between the two crimes and the proposed penalties. And any attorney who would refuse to consider that kind of a bargain ought not to be practicing law, in my estimation. The judge who sentenced the gentleman, I spoke to him. He said, I thought the Board of Pardons would have commuted that sentence years ago; I have no objection to it being commuted. He still is in prison. I hope that if you...I'd like to see you pass the bill with your amendment. It has to be meaningful. Sixty years is a charade. It's a farce. It ought to be treated with contempt. And I have a lot of respect for almost all attorneys, and some only went to law school. Most of them are smarter than I am, all of them probably. But the point I make is this: a 60 year-to-life sentence does not in any way, shape, or form do what the Supreme Court orders to be done. And I hope that the language in the bill is specific. I hope it (inaudible) a court of action. I hope it sends the individual back for sentencing by the court, not through the Board of Parole or the Pardons, because that will be another long time, you know. This concludes my sentence...not my sentence, my testimony. Thank you. [LB44]

SENATOR LATHROP: Thank you. Loran, we appreciate it. Senator Ashford. [LB44]

SENATOR ASHFORD: But Loran, Senator Schmit, you're a good man. [LB44]

LORAN SCHMIT: Thank you. That's one vote. [LB44]

SENATOR ASHFORD: And I've heard this story from you...I'm for this bill. (Laugh) And...I'm for this bill. And part of the reason is because, you know, I listened to people like you and Senator Chambers back when I was significantly younger. And you took me aside before this case came up, because this was a long time ago, and you told me about why you were against the death penalty. And you told me you had started out not being against the death penalty. [LB44]

LORAN SCHMIT: Very much so. [LB44]

SENATOR ASHFORD: And you stood up as a great advocate of being against the death penalty, and I can tell you...and I've told you this in private, but...privately...but I admire you so much as a friend and as somebody who always stood up for what you believed in when you made that decision to be against the death penalty and supporting Senator Chambers. It meant a lot to me and it helped my thinking as well. So I just...whenever I get the opportunity to say that to you, I appreciate... [LB44]

LORAN SCHMIT: Well, you're very kind. I want to say this in closing. My major concern during my legislative career and since that time is when I review the disparity and sentencing one man that gets six months and another man's life without parole. I was convicted of speeding, 66 miles an hour in a 65-mile zone. Cars were going around me

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all the time. I went to court. I got convicted. I'm still angry every time I drive by that milepost on the interstate. (Laughter) That's been 25 years ago. And so can you imagine...can you imagine how this individual feels in the penitentiary knowing that his accomplice did six months because he hired his own high-priced attorney and beat Joe's court-appointed attorney to the courthouse. Thank you very much. Appreciate being here. [LB44]

SENATOR LATHROP: Thanks, Loran. [LB44]

ADAM SIPPLE: Good afternoon, Chairman, members of the committee. My name is Adam Sipple, A-d-a-m S-i-p-p-l-e. I was asked by the Criminal Defense Attorneys Association to appear in support of this bill, and I do. To try to add to the conversation, what I'd like to ask is to remember that the bill should address these felony murder cases. A person can be convicted of felony murder by verbally encouraging a robbery or an arson or some other offense. To give that person life in prison as a child without the possibility of parole seems way outside the mainstream of civilized thought, frankly, in this world. It's clear from the cases, Senator, that it's not just a mitigating circumstance. Under Inman (phonetic) v. Arizona and Graham v. Florida, a child who doesn't kill or intend to kill can't be given life in prison, whether it's mandatory, whether we've considered the other mitigating circumstances, including the child's age and background. Even after considering those things on an individualized basis, you cannot impose life in prison for that type of offender. And that's because while we can transfer intent for purposes of criminal liability, we can't transfer intent for purposes of Eighth Amendment sentencing. And so you must treat the juvenile who commits felony murder different than one who kills or intends to kill. There's at least one of those 27 who at the age of 16 verbally encouraged a robbery into serving a life sentence. I don't think anybody can support that. The only other point I wanted to make was this: Look, we're all here to do justice. And those aren't opposing forces, to consider evolved thought and science and common sense before sentencing a child. That's not pitted against justice; that is justice. That's what we're all trying to do here. And then the final point is that I'm not sure that we should wrestle with the number on the low end. If we address it with some humility, we address it with some respect for the district courts and for the district judges that see witnesses and hear witnesses and listen to testimony from somebody that does the psychological assessment and afford them some discretion for determining based on their much greater experience than many of us in the Legislature as to what the appropriate sentence would be. And guess what? I think they're sensitive to the victims and I think they're also trying to do justice. [LB44]

SENATOR LATHROP: Thank you, Mr. Sipple. Any questions? Senator Chambers. [LB44]

SENATOR CHAMBERS: Did you hear what Douglas County Public Defender Tom Riley mentioned about these sentences being handed down, 80-to-120 years, 120-to-160

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years, by judges that you say we should have confidence in? [LB44]

ADAM SIPPLE: Well, you can have your opinion about whether they're the lesser of two evils, but to impose a mandatory minimum sentence instead of at least giving the well-reasoned and thoughtful and conscientious judges the option of imposing a lesser sentence seems misguided. [LB44]

SENATOR CHAMBERS: Where do you find such judges? Every time you begin to define and qualify, I don't know of any judges that fit the description. [LB44]

ADAM SIPPLE: I'm only 20 years in, Senator. But I still have some faith and some respect for these folks that make these decisions. And frankly, I'd rather have them make them than... [LB44]

SENATOR CHAMBERS: (Singing) They call him a dreamer; maybe he is. That's you. I appreciate your testimony though. [LB44]

ADAM SIPPLE: All right. Anything else? [LB44]

SENATOR LATHROP: I think that's it. [LB44]

ADAM SIPPLE: Thank you. [LB44]

SENATOR LATHROP: Thank you. Next proponent. Welcome once again. [LB44]

ALAN PETERSON: (Exhibit 11) Thank you, Vice Chairman Lathrop, members of the Judiciary Committee. I'm Alan Peterson. I represent ACLU-Nebraska. I want to come up here with a few minutes each time, I try not to waste your time or mine. I'm concerned a little bit that what I had to say today is too close to musings rather than really help. But nevertheless, it's what I'm thinking about for you, and I know you'll listen. Nobody has said why we're doing this under the constitution, really. There was mention of the Eighth Amendment. We're talking about the cruel and unusual punishment clause that's found in the Eighth Amendment to the Constitution of the United States. There's a similar clause in the Nebraska Constitution. That has been defined by the Supreme Court in some rather beautiful language how do they decide what's cruel, what's too unusual and too cruel? And they came up with this formulation in describing how they decide, that they want to look at that Eighth Amendment as growing, in a way; as becoming smarter, just as we've learned so much about how children may think about crimes or not think about them before they commit them. And what they said is that the Eighth Amendment's legal theory now represents the evolution of decency that marks the maturation of a civilized society. Beautiful phrase we're throwing out here because we're talking about progress in regard to sentencing of kids that's been way too long coming. I know there's a question about retroactivity. I know there's a better lawyer here on that

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issue, Jerry Soucie, if you can get him to help you with it, who's dealt with that and researched it, as have I. It's got to be drafted carefully in order to make this effective on the people already sitting, serving those life sentences. It could be done. I would just mention one fairly small point. All this testimony about how children, people under 18, whatever year you take, are less likely to be able to resist peer pressure, to think for themselves, make the judgments that keep them out of jail, keep them from hurting or killing other people because their brains aren't ready, on average, to make as good of judgments as they need to make. A nice little corollary...it's not from me, I'm no expert in this area, but I read it two or three times in researching about this subject. It also means that those brains may be malleable, formable still, when they're in jail and can be rehabilitated, can be cured, can be helped to become responsible, safe people in society. It's a nice corollary. They can be...we can change, and maybe the younger they are the more able they are to change. I'll finish by saying that to me the Eighth Amendment issue behind this issue, the cruel and unusual punishment, the Bill of Rights, the Constitution, it's a little bit like the baseline in music. And I know from listening to Mr. Riley that there's a baseline in Irish music like he and his group play in Omaha. The baseline is almost like the heartbeat. Behind individual actions that we all do with our arms and legs and heads, that deep, meaningful, important background music--and that's the Bill of Rights, the Constitution. Thank you. [LB44]

SENATOR LATHROP: Thanks, Alan. Senator Ashford. [LB44]

SENATOR ASHFORD: Just an anecdote, Alan. And I remember when I tried my first jury trial against you, and you threw that old First Amendment at me, you know. And you... [LB44]

ALAN PETERSON: I've been accused of being able to find that issue in a ham sandwich. [LB44]

SENATOR ASHFORD: And you beat me pretty good. [LB44]

ALAN PETERSON: No, I don't think so. [LB44]

SENATOR ASHFORD: Yeah. So you taught me my...you may not know much about all these issues that you talk about, and of course, you do, but you certainly knew about the First Amendment and I think you probably know about the Eighth Amendment as well, so. [LB44]

SENATOR LATHROP: I think that's it. Thank you. [LB44]

TOM STRIGENZ: (Exhibit 12) Good afternoon. My name is Tom Strigenz. I'm the Sarpy County Public Defender, but I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. I think I'm the one who is supposed to wrap this all up on the

proponent side of this thing. And what I want to do is try to give you some language and give you language that we think absolutely needs to be in a statute not unlike LB44. Basically, I'm going to read it into the record, and the first section basically just so...as an aside, we are worried...we know we want these juveniles to have a meaningful opportunity to get out and to be eligible for parole. So what we get worried about a little bit is that defendants will get stacked on charges and that they might be run concurrent to other things. And we think that a ten-year time frame before...so they get a parole time frame, is important. We believe that language should say something like: In determining the sentence for a criminal offense committed by a person under the age of 18, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be more than 20 years either when the charges are run consecutive with each other or any other sentence the defendant receives for a crime committed before his or her 18th birthday, nor greater than one-third of the maximum sentence fixed by the law, and the maximum sentence shall not be greater than the maximum provided by law. We tried to frame that in saying basically we wanted to give a parole opportunity after 10, and that's what that does; or a lesser amount if the higher number is lesser than 60. We then go on to talk about everything we've talked about today: the mitigating, how this sentencing should occur. And we think the language in the statute should be as follows: If the defendant was under 18 at the time of the commission of the offense for which he or her are being sentenced, and the defendant is facing more than 60 years, the defendant shall be entitled to a mitigation hearing prior to being sentenced. The court shall set said mitigation hearing within 120 days, although the mitigation hearing may be continued by a motion of the defendant or the attorney or the state. The court shall enter a comprehensive mental health evaluation which shall be completed before said mitigation hearing. This evaluation shall be administered by an adolescent mental health professional licensed in the state of Nebraska. This evaluation shall include but not be limited to the following: (1) family interviews, (2) prenatal history, (3) developmental history, (4) medical history, (5) history of treatment for substance abuse, (6) a social history, (7) a psychological evaluation, and most importantly, (8) recommendations for treatment. The defendant or the defendant's counsel shall have the right to call witnesses and present mitigating factors to the court at said mitigation hearing including but not limited to: (1) age of the defendant at the time of the offense, (2) impetuosity, (3) family and community environment, (4) ability to appreciate the risk and consequences of the conduct, (5) intellectual capacity, (6) the outcomes of a comprehensive medical evaluation as stated before, (7) peer or familial pressure, (8) level of participation in the offense, (9) school records and special education evaluations, (10) ability to participate meaningfully in his or her defense, (11) trauma history, (12) faith and community involvement, (13) any other mitigating factor or circumstance, (14) involvement in the child welfare system, and (15) capacity for rehabilitation. And lastly, we feel very...a sentence and line needs to be that the defendant or defendant's counsel shall have the right to last argument during that sentencing hearing. With that, I'd submit that. [LB44]

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SENATOR LATHROP: Okay. We might...Senator Seiler has a question for you. [LB44]

TOM STRIGENZ: Yes. [LB44]

SENATOR SEILER: At the first part of your mitigation, you said you could not...no matter how many offenses, could not stack. [LB44]

TOM STRIGENZ: What we want to make sure is that the juveniles have an opportunity at a parole hearing within basically ten years of incarceration. So that's the point. [LB44]

SENATOR SEILER: Okay. I was visualizing multiple shootings... [LB44]

TOM STRIGENZ: Correct. [LB44]

SENATOR SEILER: ...that would stack those. [LB44]

TOM STRIGENZ: I think judges might stack those. Yes, sir. [LB44]

SENATOR LATHROP: Tom, I think we'll have you...I don't know if we have a copy of that, do we? [LB44]

TOM STRIGENZ: It's...as we've discussed, today it's been (inaudible). But I believe legislative counsel does have at least a copy of this, yes. [LB44]

SENATOR LATHROP: Okay, good. Good. Thank you. I appreciate that and I see no other questions. [LB44]

TOM STRIGENZ Thank you. [LB44]

JERRY SOUCIE: (Exhibit 13) Mr. Chairman and members of the committee, my name is Jerry Soucie, S-o-u-c-i-e. I've been involved with these related issues for about the last 30 years. I had been intending to testify as a neutral, but after Senator Coash yesterday tried to explain the difference between neutral for and neutral against, I decided just come out as a proponent. In regards to the substantive area, and I'm only going to address the issue of retroactivity which I think presents some very serious constitutional challenges for the committee in how that's drafted. And I really don't want to try and get into what's the sweet spot, as it's been referred to, in terms of the substantive part of what would be the appropriate minimum sentence, but I think you need to consider in that aspect that rather than trying to substitute your judgment, what you need to do is to have it low enough where it covers anybody who would be appropriate, and then leave it to the judge who will be resentencing or sentencing on the original case to determine what that parole eligibility should be, and that will be

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determined on a number of factors. And I don't think it's the Legislature's burden to try and come up with the perfect sweet spot that will hit everybody, because there is no such number. The point I want to make on the matter that I've presented is that...and this is going to pain me, and Senator Chambers will know how much it pains me, I've included in that an Attorney General's Opinion from Don Stenberg which I think, unfortunately, may accurately state the law regarding trying to retroactively reduce a sentence. And that's the most painful thing I've ever had to say as I'm sitting here. But there is a huge problem where you try and come in and legislatively reduce a sentence. But we have an operative fact here that doesn't exist in those sorts of policy judgments that have been trying to be made. In other cases we have prison overcrowding. We have a case here in which we have an operative United States Supreme Court case that says the current situation is unconstitutional, and so the way that you can address this constitutionally is to simply provide a vehicle by which the inmate can get back into court. When that inmate gets back into court, then if you give him the option...her...there's actually one woman. Give him or her the option of saying, okay, I either want to be sentenced under the lesser included offense that existed at the time of my offense, and that would be constitutional. There's other case law that says if the top sentence has been declared unconstitutional, we simply drop down. Or I can be sentenced under the laws that exist under Section 1 of this bill. Then you're not going to run into any kind of constitutional problems. I've drafted some proposed language. I'd be happy to work with you preparing...tweaking it. But that's what it tries to do. There is precedent for this because it used to be the only way you could get into court for an unconstitutional conviction in Nebraska was to try and do a state habeas corpus. We had a very narrow interpretation of that. Judge Sam Van Pelt, old Judge Sam Van Pelt, appointed a young lawyer named Norbert...oh, no, excuse me...he came to the Supreme Court...Krivosha, Norm Krivosha, and they did a case and essentially provided the framework by which the Post Conviction Act was created. So it provided a procedural remedy for people like Tom Riley, Adam Sipple, myself. I think I have a couple of these cases, or are least one is in the works, where we can simply get into court and then do what we try and do best which is present a sentencing argument for our client that has the kind of range that makes some sense and would comply with Miller. Thank you. If there's any questions. [LB44]

SENATOR LATHROP: Thanks, Jerry. [LB44]

SENATOR ASHFORD: Senator Lathrop gets to ask that, Jerry. We've been saying this to you... [LB44]

JERRY SOUCIE: Oh, I'm sorry. [LB44]

SENATOR ASHFORD: ...for years. [LB44]

SENATOR LATHROP: That's all right. Any questions? (Laugh) I see none. Thanks,

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Jerry. [LB44]

JIM CUNNINGHAM: (Exhibit 14) Senator Lathrop and members of the committee, good afternoon. My name is Jim Cunningham and it's spelled C-u-n-n-i-n-g-h-a-m. I represent the Nebraska Catholic Conference, which is an association representing the mutual interests and concerns of the Archdiocese of Omaha, the Dioceses of Lincoln and Grand Island under the direction of the diocesan bishops. The Nebraska Catholic Conference supports LB44 and urges that you advance it to the full Legislature. It's 4:30 but you still have seven hours under Revenue Committee standards, so. (Laughter) [LB44]

SENATOR ASHFORD: We can go to midnight under rules. [LB44]

JIM CUNNINGHAM: I was thinking of just handing in my written testimony but I would like to highlight a few comments from it. From the perspective of the Catholic Conference reflective of Catholic social teaching, there is no question that responsibility, accountability, and effective punishment are fundamental to the demands of a just society. There is no question that violent and dangerous youth need to be confined for their safety and that of society. In no way does our conference's support for LB44 have any intent or purpose of minimizing the seriousness of crimes or the concern and compassion unquestionably due to victims and their families. Nonetheless, our view is that minors should not be treated as though they are equal to adults in moral or cognitive development. Life sentences without parole eliminate opportunity, not merely opportunity for parole review, but even more significantly, all meaningful opportunity for second chances, for rehabilitation, reform, and reintegration into society for those who lacked adult development, rationality, and judgment when they committed crimes that caused them to be punished as adults. Despite all they have forfeited in their claims on society, their lives should be respected and their human dignity upheld. It should be recognized that by virtue of their youth and immaturity, they have a remarkable capacity for change and reform. Thank you for your attention and consideration. [LB44]

SENATOR LATHROP: Thanks, Jim. I see no questions. [LB44]

JIM CUNNINGHAM: Thank you. [LB44]

SENATOR LATHROP: Have a good weekend. Next proponent. [LB44]

MEL BECKMAN: (Exhibit 15) My name is Mel Beckman. I live at 3636 Lafayette Avenue in Omaha. I'm going to skip most of my testimony, just the last part. I just want to say that I'm happy with this bill. Nebraska is moving forward with plans to make life sentences for teenage criminals a thing of the past. While they'll still be held accountable, they won't be deprived of hope, unlike those who are currently...who have been deprived of hope in the past. In the future, they will have a chance to be paroled if

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they've earned it, and that's good. I've also been asked to, if permissible, to read something from a victim anticipating that there probably will be others who are taking the position of victims. I could either read the first and last paragraph... [LB44]

SENATOR ASHFORD: Mel, why don't...well, go ahead, Senator Lathrop. [LB44]

SENATOR LATHROP: Yeah, we'll probably have you submit that and we'll make copies of it, if that's okay. I think that's in keeping with our rules structure of the committee. [LB44]

SENATOR ASHFORD: We have the letter, Mel, and we have another letter as well that are...and I don't...you always do a wonderful job when you come here and testify. We just have to kind of keep it... [LB44]

MEL BECKMAN: All right. That's all. Thank you. [LB44]

SENATOR LATHROP: All right. Very good. Thanks for coming. Are there any other proponents who wish to testify? Anyone here in opposition? Anyone in a neutral capacity? Senator Ashford to close on LB44... [LB44]

SENATOR CHAMBERS: He waives. [LB44]

SENATOR LATHROP: ...if you wish. [LB44]

SENATOR ASHFORD: Senator Chambers always says that to me. I waive. (Laughter) [LB44]

SENATOR LATHROP: (See also Exhibit 16) All right. That will close our hearing on LB44. Thank you all for your patience and your testimony. All right, we will roll right into LB318 and Senator McGill. [LB44 LB318]

SENATOR MCGILL: I'll let people clear out for a second. Not much of a crowd left. That's a good sign. [LB318]

SENATOR LATHROP: I think we ended that hearing with no opponents, interestingly enough. Okay, Senator McGill on LB318. [LB44 LB318]

SENATOR MCGILL: (Exhibits 17 and 18) All right. Good afternoon, fellow Judiciary Committee members. I'm State Senator Amanda McGill; it's M-c-G-i-l-l, and I'm here to introduce LB318, a bill that changes provisions related to criminal fingerprinting by adding that those arrested for misdemeanors shall be fingerprinted. The bill also provides electronic fingerprints be accepted from one law enforcement agency to another. My understanding is that electronic fingerprinting is already widely used, and

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so the related provision in the bill is simply codifying current practice. Individuals in the Nebraska State Patrol, Lincoln Police Department, Douglas County Sheriff, attorneys, and others have worked on this bill. I'm grateful to have received a lot of valuable input on this bill over the last few weeks, and I'd like to thank all the individuals that have contacted our office expressing interest and support. You will be receiving an amendment, or you probably already have, as it was passed around, to the bill, and I will describe that in a moment. And the problem we're trying to address right now is that there's no current requirement to obtain fingerprints for misdemeanor arrests. And some of them are the types of things that, if convicted, possible employers or other things we want to know about. So when some of these people are found guilty, there is no official fingerprint-based criminal history, and that's how their criminal history is generally tracked is through that fingerprint, that can be used by the rest of the criminal justice community. For instance, in obtaining a concealed carry permit or the chance to purchase a gun or if someone wants to become a foster parent, you know, some of these charges are serious enough that you would want to know about those things. The letter I passed out from the city of Lincoln, the Police Department, lists some of those. I mean, there are third-degree assault charges, impersonating a law enforcement officer, identity fraud, child abuse. So there are a variety of things that I think most of us would like to see come up on background checks if that person has been found guilty to make sure that people aren't being given opportunities that they shouldn't be or where they're putting the public or children in danger. And so without this fingerprint-based criminal history, a person could be arrested and found guilty of any of the serious misdemeanors that are listed in that letter, like, for instance, here in Lincoln, and then move to another city in Nebraska or another state and get hired as a police officer. The Lincoln Police Department just had to fire a new recruit for this very reason. You know, they didn't pick it up on an initial check. And so this bill is trying to close that loophole. Now we do...like I said, there is an amendment that we passed out to clarify some things. That amendment is based on feedback I perceived from a lot of law enforcement organizations, and the consensus was that this bill should apply to custodial arrests only. Accordingly, the amendment excludes those who are cited, detained, and immediately released. In the amendment we have also attempted to clarify that an arraignment hearing should not be interrupted so that a suspect can be fingerprinted. So the bill was revised so that prints would not only...would not have to be taken prior to the acceptance of a plea, but rather should be taken prior to the suspect's release from custody. You know, a few other things have come to our attention, and I assume that from behind me we'll hear some additional impact on some different ideas on how to make the bill better. You know, as you heard through my testimony here, I'm largely concerned about those who are found guilty and having these misdemeanors on their criminal record that's tracked through the fingerprint. And if there are ways to streamline the bill to make sure we're getting at those that aren't just arrested but are actually found guilty, I'm open to suggestions. But I do think that these are the sorts of things that should be appearing on someone's criminal record. [LB318]

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SENATOR ASHFORD: Senator Coash. [LB318]

SENATOR COASH: Thank you, Senator Ashford. Senator McGill, and maybe your amendment clarifies this, but I'm reading through the statement of intent and I want to clarify something. Are you telling me that if a person is convicted of a crime, one of these misdemeanors that your bill addresses, let's say criminal mischief, all right, something of that nature, and if that person...you know, they're convicted, they pay their fine, do their time, whatever it is, you're saying that if that person does not... [LB318]

SENATOR MCGILL: They weren't fingerprinted in the process. [LB318]

SENATOR COASH: If they weren't fingerprinted and I go check that person's background for purposes of employment, I will not see that? [LB318]

SENATOR MCGILL: That's my understanding. [LB318]

SENATOR COASH: So even if it's part of the person's criminal record... [LB318]

SENATOR MCGILL: Because the criminal record is tracked through that fingerprint. In fact, there are people who are brought in or charged on multiple types of misdemeanors and the fingerprint may only be attached to one of those, and so maybe that assault is showing up on the fingerprint but that identity theft or whatever the other thing was, doesn't show up. [LB318]

SENATOR COASH: Because as part of my work I check background...criminal background checks all the time. [LB318]

SENATOR MCGILL: I know. You would be concerned, wouldn't you? [LB318]

SENATOR COASH: And... [LB318]

SENATOR MCGILL: And there are much better experts behind me, I'm sure. I am not the queen of the logistics of this system, and so some other folks may be able to help you with this. [LB318]

SENATOR COASH: Okay. If indeed that's true, I'm concerned and I get why you brought the bill. [LB318]

SENATOR MCGILL: Yeah. And that's why I was brought this idea, in general, so. [LB318]

SENATOR COASH: (Inaudible.) Okay. All right. Thank you. [LB318]

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SENATOR MCGILL: All right? [LB318]

SENATOR ASHFORD: Thank you, Senator McGill. Any proponents for the bill? Okay. Opponents? Mark. [LB318]

MARK FOXALL: (Exhibit 19) Good afternoon. Mark Foxall, director of Corrections, Douglas County, Nebraska. We are on record, at least the county board is, in opposition to the green copy of the bill. However, as amended--and I've not had a chance to review the amended copy of the bill--we, in hearing the senator's testimony, we would not be in opposition. But I need to take a look at the bill. So I have prepared remarks; however I don't think that they're necessary at this time given the amendment that the senator proposes. [LB318]

SENATOR ASHFORD: I don't see any questions, Mark. Thanks. [LB318]

SENATOR LATHROP: What is his last name? [LB318]

SENATOR ASHFORD: Foxall. Any other...? Judge McDermott, are you...? Or you're neutral probably. How about other opponents? Neutral? Pat. [LB318]

SENATOR CHAMBERS: As the fine Irishman comes up, Jesus said, I would that you were hot or cold, but if you're lukewarm I shall spew you out of my mouth. I just thought I'd throw that out (inaudible). [LB318]

_____: Uh-oh. [LB318]

SENATOR ASHFORD: No, I think...and it certainly is a good segue into Pat's... [LB318]

PATRICK McDERMOTT: (Exhibit 20) Yes, it's...Mr. Chairman and members of the committee, my name is Patrick McDermott. I'm a county judge in the Fifth Judicial District and the cochair of the legislative committee in the County Judges Association. I appear on their behalf. I appear neutral because, frankly, it's none of the judges' business what you ask law enforcement to do with respect to fingerprints. We were concerned about paragraph (2). And I did bring some numbers, but I think the senator's amendment probably takes care of our major concern. It was this: How does a judge know in arraignment who has and who has not been fingerprinted? There's nothing in the file that tells me that, particularly those of us who are now going paperless and we use electronic files. You know, in the old days you could look at the back of the file, sometimes that card was there because the magistrate finished it. But we just simply wouldn't know, and I looked at...if I have to ask the prosecutor, I think it's going to take that exchange about 45 seconds. And I looked at the numbers at Douglas County--and that's what this will demonstrate and I'll ask the page to give that to you at the end of the--it would take among the three metro counties six-tenths of a judge just to ask that

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question at all the arraignments that are done annually. And six-tenths of a judge is a terrible thing, because I don't know many six-tenths of judges that are available. (Laughter) But, you know, you have that problem of it takes time to do that. And in Douglas County where you use every courtroom, and you expand a day's arraignments by an hour or two, there's not enough prosecutors, public defenders, or judges and space to have that delay and get the same number of cases through. So that was our only concern. Otherwise, we are neutral on the bill. [LB318]

SENATOR ASHFORD: Thanks, Pat. Any other neutral testifiers? [LB318]

AMY PRENDA: Hi. Amy Prenda, A-m-y P-r-e-n-d-a, appearing on behalf of the Nebraska Sheriffs Association. First, I wanted to say that the sheriffs support the concept or the public policy issue behind this bill. As drafted though, we did have some concerns and we shared those with Senator McGill's office. Because I have...I know that I talked to her about the amendments but I hadn't seen the amendments actually, I'm here in a neutral capacity today letting Senator McGill's office know that we do have a sheriff that is on the AFIS board which is the automated fingerprint board that looked at and is drafting...or wanted this public policy put into place. And so I would like to continue to work with her office to try to get it in a format that is acceptable to all the parties involved. So while I am not an expert, I could try to answer some questions if you have any. [LB318]

SENATOR CHAMBERS: Before she leaves... [LB318]

SENATOR ASHFORD: Yes, Senator. [LB318]

SENATOR CHAMBERS: ...Senator McGill threw me a curve. [LB318]

SENATOR ASHFORD: Oh. [LB318]

SENATOR CHAMBERS: I thought some experts were going to testify after she spoke, so I didn't ask her any questions. So are you going to close, Senator McGill? [LB318]

SENATOR MCGILL: I'll come back up. [LB318]

SENATOR CHAMBERS: Okay. [LB318]

SENATOR ASHFORD: Thanks, Amy. Do we have any other neutral people...or not neutral people necessarily, but. Any independents in the room? No, I'm just kidding. [LB318]

MICHAEL THURBER: My name is Michael Thurber, T-h-u-r-b-e-r. I'm the director of Lancaster County Department of Corrections, the county jail here in Lincoln. Today I'm

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doing this a little bit on my own. But as...I'm testifying neutral. The concerns we have in the bill right now is that...I haven't seen the amendments, but citing and release is a real big practice in most metropolitan and primary cities. Over 20,000, 30,000 people a year do not come to jail. And a concern that I would have is that we had looked at that, that they are not then brought into jail just to be getting these fingerprints, the collection of that. So I would hope that this bill would not increase incarceration throughout the county jails that we see in Nebraska. So I would like to see some type of way of tracking cases that do not require fingerprints, and how does criminal histories be established might be a question we need to bring up with the State Patrol, so. [LB318]

SENATOR ASHFORD: Thank you. Thanks for your comments. Senator McGill...no. Oop, yep, Senator McGill. [LB318]

SENATOR MCGILL: I apologize that none of my friends came to visit me today. Maybe Senator Chambers had something to do with that. (Laugh) [LB318]

SENATOR CHAMBERS: And, Senator McGill, what happened to you indicates what happens sometimes when you work with law enforcement people. [LB318]

SENATOR MCGILL: (Laugh) [LB318]

SENATOR CHAMBERS: There's a letter that they sent but they won't show up. Now who in the world asked you to bring this bill? [LB318]

SENATOR MCGILL: I was working with folks in the Douglas County Sheriffs Office initially. [LB318]

SENATOR CHAMBERS: Is there anybody from that office here today? [LB318]

SENATOR MCGILL: No. [LB318]

SENATOR CHAMBERS: I think it's one of the worst bills I've seen and I'll tell you why. Other people have mentioned practical aspects, but I'm looking at the fact that all this information winds up in the FBI's file. Anybody who commits these misdemeanors winds up in the FBI files. I'm very protective of the public and I don't think you ought to wind up there. See, for years, and I might still be under investigation now by the FBI. Never done anything. When I was attending Army Reserve meetings, they went out there and tried to get the ones who dealt with me to say that I was disloyal. Two said I was loyal; two said they didn't know. (Laugh) But at any rate, any time something on the citizens will wind up in the hands of the FBI, I'm skeptical. And when this language says the felonies...that is already in the law...or a fugitive from another jurisdiction. But then violation of a city ordinance with a substantially equivalent penalty of a Class I, Class II, or W misdemeanor or for violation of this city ordinance, and it has nothing to do with

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the nature of the violation but if it has a substantially equivalent penalty. The reason they're saying that, so they can get things like if you don't...if they tell you, fix your house up and you don't fix it up and there's any kind of thing. We had a bill in here where if you didn't take care of your properties up to \$500 fine... [LB318]

SENATOR MCGILL: That was my bill. [LB318]

SENATOR CHAMBERS: Okay. So that person would wind up in the FBI file. (Laugh) [LB318]

SENATOR MCGILL: I see what you're saying, sir. [LB318]

SENATOR CHAMBERS: This is Big Brother on steroids. And I noticed an actual legislation that got into the books when I was not here that makes me ashamed to be an American, if America is what it's supposed to be. People's right to privacy has been shredded and it happens in this committee. Things which when I was here they would not have dared to bring, they got it passed. And then any other criminal violation, and even with the amendment, that is something that is...I'll use diplomatic language. That is unacceptable. Now if the Douglas County Sheriffs Department was so fired up to have this done, they should have at least come here to support it. And since they were not here to support it, I'm going to view this bill in the way a bill is dealt with if it has no person on it anymore as a sponsor. If all the sponsors' names are gone, the bill die...there's no bill. I'm going to consider this as something that doesn't exist. And, Senator McGill, I'm not going to ask you any questions about any of it. [LB318]

SENATOR MCGILL: (Laugh) Okay. [LB318]

SENATOR CHAMBERS: But I was wanting to know who had tricked you in such a way that you could then trick me, because I have such confidence in you and trust you so much. [LB318]

SENATOR MCGILL: (Laugh) Well, I appreciate that, Senator Chambers. I do think there is some good intentions behind some of the reasons for this bill, but I can understand... [LB318]

SENATOR CHAMBERS: Why do you think they didn't come? [LB318]

SENATOR MCGILL: H'm? [LB318]

SENATOR CHAMBERS: Why do you think they didn't come to support it? [LB318]

SENATOR MCGILL: That is good question, sir... [LB318]

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SENATOR CHAMBERS: Okay. [LB318]

SENATOR MCGILL: ...because I know there were other law enforcement who felt this was long due. But like you pointed out, they didn't show up. [LB318]

SENATOR CHAMBERS: Are you from Lincoln? [LB318]

SENATOR MCGILL: H'm? [LB318]

SENATOR CHAMBERS: Are you from Lincoln? [LB318]

SENATOR MCGILL: Originally from Omaha but I represent Lincoln. [LB318]

SENATOR CHAMBERS: And nobody came even though they wrote this letter and mentioned all these horrible things? [LB318]

SENATOR MCGILL: Yeah. The Chief said he was going to be here and he's not, so. (Laugh) [LB318]

SENATOR CHAMBERS: Um-hum. I can tell you in two words why all of them are not here: Ernie Chambers. They used to line up to come before this committee. And since you are kind of the sounding board and you're a member of the Legislature, this will take about two minutes. [LB318]

SENATOR MCGILL: Okay. [LB318]

SENATOR CHAMBERS: Marty Conboy gave an interview to the Omaha World-Herald, and I'll bring a copy of it, where he said: Since Senator Chambers left, the intimidation factor at the Judiciary Committee is gone. He said: When you went there and Senator Chambers was there, you either knew what you were talking about or you got embarrassed. And they lined up to come here at that time. It's a different day now, and I think it's not a good idea to put a senator who's not an expert on a subject into bringing a bill and then not showing up. So you can say that if it wasn't for the fact that I was reared--even if it sounds chauvinistic and patronizing--if I had not been reared to give deference and respect to women, I would have behaved a lot differently, save Senator... [LB318]

SENATOR MCGILL: Oh, I can take it, Senator Chambers. [LB318]

SENATOR CHAMBERS: ...if Senator Lathrop had brought it. But that's all that I have. [LB318]

SENATOR MCGILL: (Laugh) All right. [LB318]

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Judiciary Committee
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SENATOR ASHFORD: Thank you, Senator Chambers... [LB318]

SENATOR CHAMBERS: You're quite welcome. [LB318]

SENATOR ASHFORD: ...and Senator McGill. [LB318]

SENATOR MCGILL: (Laugh) [LB318]

SENATOR ASHFORD: (See also Exhibits 21 and 22) I think that concludes the...
[LB318]

SENATOR LATHROP: Have a great weekend. [LB318]

SENATOR ASHFORD: Yeah, have a great weekend, everyone. [LB318]