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Judiciary Committee  
February 14, 2013

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[LB233 LB280 LB412 LB607 LB611]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 14, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB412, LB233, LB280, LB607, and LB611. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Well, good afternoon, Senator Schumacher. Welcome. Welcome, everyone. This is the Judiciary Committee. If you think you should be in the Banking Committee, this is the wrong place. Why don't we get started. We have LB412 is the first bill, Senator Schumacher's Adopt the Freedom from Unwarranted Surveillance Act. Senator Schumacher. [LB412]

SENATOR SCHUMACHER: Thank you, Senator Ashford and members of the committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r from District 22 in the Legislature, and I'm here today to introduce the Freedom from Unwarranted Surveillance Act. This bill's origin came about halfway through bill introduction, when I got a call from a constituent who said: What about the drones? And I said, well, what about the drones? And he says, well, are you going to do anything about the drones? And immediately my ears perked up and I could see the Snoopy drone going after the Red Baron drone from the federal government who was there to enforce Proposition 21 or whatever. And I kind of laughed a little bit. And he said, no, I'm serious. He says in Florida they've advanced a bill out of the Florida committee to the Florida senate about drones. And he said it's a legitimate concern. He says, you should check into it. So I did check into it and I ended up grabbing the Florida bill and having it written here to present to the Legislature here. And the situation is this: Over the last few years drone technology has become a big thing. Lots and lots of money have been put into the development of drones that not only can carry weapons but carry, in a more scary proposition, very, very powerful optics and they can see really, really close. And a lot of money has been put forth into development of the size of drones. They're getting smaller. They're getting more sophisticated. There's a lot of capacity that they have. Well, that was military development, and manufacturers had a military market. And apparently these things are fairly expendable and when they crash there's not much left over of just a little surveillance one, and so there was a continuing market for them. As things wind down in active combat areas, you still have manufacturers that have a lot of investment and a lot of ability to produce these things. So you've got to find a market. And an obvious market is local law enforcement, state and local law enforcement. And you get a Madison Avenue advertising firm to put together a campaign and you begin to make law enforcement and various agency enforcement folks begin to wonder how they could ever live without them. And once they purchase them, once they purchase the command and control centers that fly these things around, obviously, you're going to

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want to use them. They're just too much fun not to use. And it would be very, very hard to get things back to the way they were before once that investment has been made. So in a number of states, and now including this one, the proposition is there: Should we act proactively before the sales people hit our law enforcement with all the wonderful benefits of having a drone over every backyard? And this particular bill starts out with a proposition of just saying no, you can't use them; you can't use them for surveillance; you can't use evidence gathered from them. If it's a national security kind of thing, that's a different story; but law enforcement, you can't use them. Now, is that a totally rational proposition? Probably not. There probably are legitimate uses for these things. And legitimate uses for the things very well could be a search and rescue kind of thing, somebody is missing and thought to be out in an area alongside of a river or park or something like that and you need to cover them and detect them and try to save them before it gets cold or they freeze or they die or whatever else. So there are legitimates. And this proposition basically starts with a no and leaves the door open for law enforcement to say, you know, here is a tool that really works; it would work in this setting; here are the safeguards that we plan to put in place. Dear Legislature, can you create an exception for the use of these things under these limited circumstances? Once they're deployed, once they're owned, once the control centers are purchased, it's pretty hard to say no. But this bill is designed simply to put us in a regulatory position so that the Legislature is in control of the deployment of these things and also in control of protecting our privacy, which it used to be a pretty important thing. When I was back in law school in Georgetown, I mean, lots and lots of education on privacy, on unwarranted searches and seizures, on...I mean, you just wouldn't think that anybody could make you virtually strip down in order to go and get on an airplane. Well, life has changed somewhat. But it is a very important concern for the American population. And the government does not need to have its nose in everybody's backyard or above everybody's farm or just out there because it's there. And it's real hard, as anybody who has worked in law enforcement, and I have some experience as a county attorney for eight years, to say, okay, you can look at something but you're not supposed to see it. And that doesn't happen. You see a lot of things and the...if you have eyes in the skies there's a lot of privacy that can be destroyed. So I bring this to the committee as a proactive kind of thing to begin the discussion, possibly take action to say here's where we start. We start with a no and then, upon good cause shown, next year or future Legislatures can create exceptions when we know exactly what the technology is capable of doing and exceptions for those things where the public good can be protected without infringement on private privacy. With that, that concludes my opening. I'd be happy to take any questions. [LB412]

SENATOR ASHFORD: I mean, Paul, this is really much like what happened after Vietnam and after World War II really, even when Eisenhower said, you know, be aware of the military industrial complex. I mean, what actually is...it seems to me it's indisputable that the firearm industry and the kinds of weapons that are out there directly result from manufacture of military weapons which make our lives incredibly

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unsafe. And so, I mean, we have...and that's why it is the way it is. I mean, if we had stopped at World War II with the production of weapons, I don't think we would have the problems we have today. And this is sort of the same thing, isn't it? I mean, we're... [LB412]

SENATOR SCHUMACHER: I think so. I think that it's...business is business. And if you made a big investment in a factory and the technology to do something, and one market begins to dry up you'll look for another market; and if necessary, you'll create it. And particularly if there is funding available or the...you know, it's a good market to go after. And we can almost bet that it's going to be gone after. [LB412]

SENATOR ASHFORD: Well, we're going to destroy our privacy; we're going to destroy our ability to be safe. We are going to destroy ourselves, basically. And we aren't doing it. It's the manufacturers of these weapons that are doing it, and we're susceptible to that it seems. Human beings are susceptible to destroying each other if you give them something to destroy each other with, I guess. I mean, isn't this very similar to assault weapons? [LB412]

SENATOR SCHUMACHER: I don't know if it's...I mean, an assault weapon is a little different thing. These are spy vehicles. And, you know, there's a lot of the same...wherever money is being made, money is being made. [LB412]

SENATOR ASHFORD: Right. That's my only point. That's all I had. [LB412]

SENATOR SCHUMACHER: That's the nature of the animal. [LB412]

SENATOR ASHFORD: Yeah, it just seems...I mean I think you raise a good point with this bill is all I'm saying. Senator Chambers. [LB412]

SENATOR CHAMBERS: Senator Schumacher, at my age I can say this: Bless you, my son. When they were trying to get red-light cameras in Omaha, an ordinance was actually passed by the city council. They had made a contract with this company that was going to make money based on how many tickets were written. And being the advocate for the public that I am, not practicing law but trained in the law, I wrote a brief, argued it in court, and had that ordinance struck down as unconstitutional. It violated state law, and I won't go into all of that. But I'm opposed to mechanical so-called justice. You cannot confront your accuser. These things, they've had programs that it shows how...you mentioned backyard. They can hover; they can hover near somebody's window; they can spy. They could put some over a person's car if they're trying to surveil that person not on the basis of probable cause that he or she has committed a crime. They like to use the thing "reasonable suspicion." Cops want to be able to arrest somebody if that somebody sees a cop coming and runs. The court has said that's not enough; that doesn't provide probable cause. You can't arrest...but they want to do it.

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They want the public to believe that anything done by the military or law enforcement is all right. But law enforcement people don't even want the public to know when they've been disciplined. Their hearings they don't want to be open to the public. But they want to be able to intrude in the personal lives and affairs of everybody. If it weren't for what the Supreme Court has said--and some ignore that--they would stop you on the street if they don't like you and say I want to go in your pockets and if you don't have anything to hide you shouldn't object. Well, if it is just you and the cop, then they get away with it. So, rather than just have a provision that they cannot do this kind of surveilling, I think there should be a penalty applied so that it would be like any other intrusion into somebody else's space, violation of their privacy; and whoever does it should lose certification as a law enforcement officer. And if ordered to do so, whoever ordered it done should also lose that certification. It's not enough to tell them don't do it. Because if that was enough, there wouldn't be racial profiling and all the other things that even they acknowledge they do. So I'm commending you for bringing this. And as a first step I think it's good, but it should go further, because I'm more interested in protecting the public. This idea of terrorizing everybody and saying, well, there are criminals behind every tree, under every rock, behind every bush; and we need to be eyes in the skies, on the ground, in people's bedrooms, and wherever people gather, I'm not for that. And I think a boundary has to be set. And your bill is dealing with an area where a boundary is indeed needed. I've read over the bill. I don't see anything that is extreme. All that it is saying is don't do what you're not supposed to do. They can still use snitches. They can still get a warrant to search. All of those things. It's not hindering any legitimate law enforcement activity. And I will support you to the hilt on this and do anything I can to see that it is passed. And I won't try to add the kind of amendments that I'm talking about unless it seems that my colleagues on the floor are sufficiently sensitized and concerned about the interests of the public to do such a thing. But I want everybody who might have any interest in knowing how I feel about this so they won't be blindsided. [LB412]

SENATOR SCHUMACHER: Thank you, Senator Chambers. I thought of the same thing that it's a little weak on the penalty side if you violate it, the evidentiary provisions that they can't use the evidence. There is though a criminal statute that we already have on the books that's called oppression under color of office. And I think in an egregious violation of this there may be application of that statute. [LB412]

SENATOR CHAMBERS: You're a man after my own heart, sonny. You've thought this through and done your homework. You get an A for today. [LB412]

SENATOR SCHUMACHER: Thank you, Senator. [LB412]

SENATOR ASHFORD: Senator Seiler. [LB412]

SENATOR SEILER: Senator Chambers, I'll probably get an F. But as I was reading this

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last night, up came that man Dorner in California and those two police officers, or game wardens, when they stuck their head up above the truck and took two bullets in the face, I had a little problem with...it would have been awfully nice to have had a drone fly over and find out where that sniper was before he stuck his head up over the side of a car and took one in the face. I'm wondering if there is an exception that would protect a police officer in that scenario. [LB412]

SENATOR SCHUMACHER: Senator Seiler, that's exactly why the bill was drafted to start out with an absolute prohibition. And that's part of the job of the Legislature, of this committee to, over time, and I don't know if you could develop an exception list right away, because we don't know the capabilities of this, we don't know if you could even fly one of those things in that particular environment, at least I don't. But there may very well be a list exemptions where the Legislature says, okay, you made your case, law enforcement; in an active crime scene where to protect an officer it's legitimate, or to search for a lost child. But that's a process that I bring to the committee. But I think in order for that process to work, to balance the interest that you just described with the interest of privacy and the interest of the public to be themselves, that's a process that can only be implemented if we start out with an absolute prohibition and then very rationally and cautiously create exceptions to it as the technology develops and we become aware of request of law enforcement for legitimate use of these things. [LB412]

SENATOR SEILER: So that wouldn't...an exception like that wouldn't bother you? [LB412]

SENATOR SCHUMACHER: I'm not a dogmatist on this. I'm very practical on it. And so...but we have to start with a protection because if we don't do this and this cat gets out of the bag, he's awful hard to catch and get back in. [LB412]

SENATOR ASHFORD: Senator Lathrop. (Laughter) [LB412]

SENATOR LATHROP: Just a quick one. Just a quick one. You know what, I'm wondering if the cat isn't already out of the bag. The other day I got on the Treasurer's Web site to see, I don't know, maybe I was being a creeper or something, but I was looking to see what my house, you know, what they had on there about my own house for taxes and whatever, and they had a Google Earth image of it. You can see from the satellite image of my house, you can go into anybody's backyard from that satellite image and see whatever is there. I mean, I don't know if you could spot somebody growing weed in a farm field or if they bother taking those images, but you could see a rosebush in my backyard from that satellite image. And I wonder if this is...I mean, the drone would be live information right now, and the satellite image, but it's really some variation of the plain sight doctrine, right? [LB412]

SENATOR SCHUMACHER: It is some variation of that. [LB412]

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SENATOR LATHROP: And the question is whether this stuff is in plain sight when you can see it from the satellite. I suppose if I had a greenhouse and I was growing marijuana in it, you'd probably be able to tell that from a Google Earth image, couldn't you? [LB412]

SENATOR SCHUMACHER: I don't know if you can. I know that I can tell the white blob in my backyard is probably my white dog... [LB412]

SENATOR LATHROP: Yeah. [LB412]

SENATOR SCHUMACHER: ...in mine. But that's a one-time flash. [LB412]

SENATOR LATHROP: It is amazing the things that are available. So is...we don't have the satellites, right? Somebody does. Now I don't want to sound like the crowd that was here yesterday. [LB412]

SENATOR SCHUMACHER: And the military, quite frankly, probably has the ability to hold a camera and get a live video feed. I would guess they probably have got the capacity to do that and a lot more. But local law enforcement, when they put a bird in the air and they zoom down and look at your backyard and watch what you're doing and what motions, that's a search. You have a reasonable expectation of privacy not to be spied on by your local law enforcement or local regulatory agency; you just have that reasonable...if we don't have that, then privacy no longer means anything. [LB412]

SENATOR LATHROP: Right. Okay. Senator Chambers. [LB412]

SENATOR CHAMBERS: And, Senator, you were touching on what I was about to say. This is where they can hover and they can move it where they want it and spy. Right now, what the utility companies can do is drive past your house and read your meters. So they might be able to park their car a short distance away and send a drone and follow you and your actions. And this is not Agenda 21-type things; these kind of things are happening now. And as for Senator Seiler's example, hard cases make bad law. See, a number of people in my community have been shot by cops. One man had a cell phone, and after the cops killed him they said, he didn't have a cell phone, he had a gun. But here's the thing about it: After some weeks had passed and a cruiser was being refurbished or whatever they did, they found his cell phone in that space between the seat and the back of the seat--and the man was never in the police car. I would have liked there to have been a drone or even a cop car camera catching the action. But even though they have cameras with their cars, they know what they're going to do, where they're going to do it, and it happens that the camera is never focused on the action where they kill somebody. But if they think they can provoke somebody into doing something and they want to catch it on the camera, they will do that. If it sounds like I

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don't trust the police, I don't; and they know it. And they know that I have reason to not trust them. And the only reason they don't do anything to me, I won't tell you why, but I have no fear of them whatsoever. And my job is to speak against marauders and predators in my community whether they're law enforcers or outlaws. And this kind of activity is the kind of thing cops cannot be trusted with. They get items and they want to play with them. When Mace first came out they didn't know how to use it. They would hold the can like you hold spray and they would push it like this and it would get away from them. Then they learned you're supposed to wrap your hand around it and just use your thumb and then it won't spray on you. And like they say in Jim Croce, don't spit in the wind. They would spray it when the wind is blowing on them, but they wanted to play with it and they play with those things in our community. They've now got cruisers that will accelerate a lot faster than other vehicles. They will be doing that in my community. They will turn on the siren when they're going through a busy intersection and the light is red against them. They turn on the red lights and the siren when they're about a quarter of a block away. Everybody panics to get out of the way. They get through the intersection and they turn off the lights and the siren. They joke. They play. And there are people who don't want to believe it. That's why I have to continue to talk about it and maybe they will become aware of the spotlight I'm putting on them and it will stop. We need to be able to count on the fact that if there is a spinning light and the siren, some kind of police emergency is involved, not just that he wants to go through the intersection without having to stop. They also will come up behind somebody and slow down and turn on the lights. As soon as the person pulls over and stops, then they turn off the light and go on down. You all don't believe this happens. You don't see the side of the police we see. And with this kind of...if they had authority to do these kind of things, then they'd create situations where people say, how can I protect my community; how can I protect my children? When I'm more afraid of the police than I am from the criminal, then something is wrong. And we just had an example not long ago to show how when you had the most brutal--documented so--brutal racist police force in the country, the Los Angeles Police Department, which is bold and brave when they are intimidating and attacking people filled with terror, an entire police division because of one man, one man. The fear of him made them take all the motorcycles off the street and make their forces thin, and they couldn't protect the public because they had to go around and protect all of these houses. And he couldn't be in all of those places at one time. But when the hunters become hunted, they're not...they don't show machismo, they're not brave. They want to do everything they can to protect themselves in a way they would never protect the public. So I'm mentioning that to show why I do not trust them. And maybe, and I hope it would never happen, I hope there would not be a copycat where somebody with a gripe against the police would kill innocent people. I don't want to see that happen under any circumstances. But now to use Senator Lathrop's example, the cat is out of the bag; the genie is out of the bottle. People have been shown how to terrorize an entire police force, paralyze them; then the city is yours to do with what you want. Would we be allowed to shoot these drones down? Shoot at them? I don't know if it is a cop drone. I don't know if it is somebody spying on my

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family. They have to realize when they ask for something like this, it won't just be in their hands. And they don't want to let loose something that they cannot control. Here was a man who didn't fear death and he's not the only one like that. But there has not been the triggering mechanism. And when this society is so quick to say a cop got shot, so change the law and let them do various things but no protections for the public, then there has to be somebody like me and maybe somebody like that Dorner, not what he did but to show the impact that it had. An entire city terrorized. At least three states where people were in great fear of one person because of something that happened between him and the police. He could not get his case reopened any kind of way. But then when he took some lives, then the chief said we're going to go back, we're going to reopen this case, we're going to reexamine it. Now with all the complaints I filed against the police, are they telling me I got to start killing cops before they will take the complaint seriously? We don't want that, where we're smarter than white people, instead of having everybody get a gun in the community, we say we have got to find a way to get these people to sit down at the table with us and talk. And we are not, I'm not, going to advocate killing a cop because sometimes if a person does that it feels too good. It's too pleasurable. And when somebody like that gets loose it's like a dog who is rabid. He begins not to recognize anything. He would as soon attack a telephone pole and his or her master as anybody else. So we don't do the things that will unleash violence, because violence is not controlled. It's not going to go just at the target you want. But if the police continue doing the things they do in these communities, people have been shown what they can do if they're willing to undertake the risk. I want to find out when the police come up here to speak against this bill what it is they have on their mind; and they'll be here. But the reason I'm using you as a sounding board, my colleague, is so that they'll be forewarned, they can get their answers together and they'll know what I'm going to talk to them about. But I intend to do everything I can to help this bill get on the floor. [LB412]

SENATOR SCHUMACHER: Senator Chambers, I spent eight years as a county attorney. And there's a lot of truth in what you say. Most of the officers are really, really good and honorable people. But there are a few. And I've put some of them in jail and the penitentiary who will set people up. [LB412]

SENATOR CHAMBERS: We don't see the good ones in my community. I have a bill and I've got a video, but I'm not going to show it during the hearing, but I'm going to show it to my colleagues where they can see these cops kicking this man. He's dog-piled. They're kicking him; they're beating him. And the cop union said that was not excessive force. An arbitrator said that was not excessive force. But if we got a cop down like that and kicked the stuffing out of him, we'd be facing a felony. If I slapped him, I'd be facing a felony. So you and everybody will say that not all of them are bad. I met one today in my office who...he sounds kind of good. But the ones on the street that we deal with are rotten. And if it weren't true I wouldn't say it. It takes a lot to put me in a position like this, but I see them. I know what they do. They will terrorize children. And if



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a white man can say I've got these assault weapons to protect my children from predators, can I use an assault weapon to protect my children from predators in police uniforms? Does that go also? Or is it a one-way street? They need to know what's out here. And they need to know what they're provoking. And they're not the only ones who can buy guns and they're not the only ones who can use them. They're just fortunate that there are people like me in a community who tell people, don't do it, it's not worth it. You kill him and what have you done? They'll kill you. They'll go after anybody of your complexion. Your children don't have a father. Your wife doesn't have a husband. And they'll replace him with another one. Don't do it. Now all I have to do is stop saying anything. I don't have to tell anybody go do it. Just remove my restraining hand. And if they don't like the way I operate, tell me they want me to remove my restraining hand and see if I'm lying. Talk to the cops and see what they tell you. They'd rather have me alive and in my community than not there. And if you can talk to them, other than where all these people see them, they'll tell you that I'm not lying. So they're not our friends. They don't protect and serve. They are our enemy based on the way they mistreat us. And this...they don't need to be doing this too. We catch enough Hades...see, I don't even use bad language. I don't even say the word that is in the Bible, h-e-l-l, when I'm angry because I don't want to seem to be using profanity. But that is what we catch from them all the time, even elderly women. Just because they can stop you, just because they can hound you, they do it. And I say it publicly because I want them to know that I say it. And here's something else I say: I wish they would do to me what they do to the other people in my community because I know how to take care of myself. And if they know how to leave me alone, they know how to leave everybody alone. But what they ought to do if they're that tough, go after the ones who know how to fight back, come and get me, frame me, snatch me out of my car, try to make me lay down on the ground in the snow and put a gun on me and say lay down on the ground. I say, are you crazy? My child would not think anything of me if I let some white guy like you make me lay down on the street, I will not do it. I say it here and I'd say it on the street too. But that's all that I have at this point. [LB412]

SENATOR ASHFORD: I don't see anything else, Paul. Thank you. [LB412]

SENATOR SCHUMACHER: Thank you. [LB412]

SENATOR ASHFORD: Any proponents? Do we have proponents here today? We do use lights. Christina has forgotten that we use lights because she hasn't been here for a little while. She's been...how long ago was it? [LB412]

SENATOR LATHROP: Been over in General Affairs. [LB412]

SENATOR ASHFORD: She's in General Affairs. Do they not use lights over there? [LB412]

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CHRISTINA CASE: Not usually. [LB412]

SENATOR ASHFORD: We use lights here. [LB412]

AMY MILLER: (Exhibit 1) Especially if the ACLU is testifying, you want a light to stop us. My name is Amy Miller, it's A-m-y M-i-l-l-e-r. I'm legal director, staff attorney for ACLU Nebraska. We support LB412 because technology has pushed us into a new frontier, but our privacy protections and the protections of the law have not kept up with the advancements of technology. This is not science fiction. News reports already indicate that the federal government is using unmanned drones in Nebraska's rural areas. There have been at least seven flights to monitor water mistakes. Now the problem is, that although the entire Nebraska congressional delegation asked the EPA to stop this practice, the EPA has asserted courts, including the Supreme Court, have found these flights to be legal and we will continue to use these flights. What they're referring to, of course, is the 1989 decision by the U.S. Supreme Court, Florida v. Riley, where a greenhouse that had marijuana growing in it was observed from a police helicopter hovering approximately 400 feet in the air. And the U.S. Supreme Court said there was no undue noise, no wind, no dust, no threat of injury, and so under these circumstances no Fourth Amendment violation. The problem is that a drone is even more capable of invading our privacy than the helicopter hovering high above us. We need LB412 to protect Nebraskans' privacy rights because the Supreme Court cannot keep up. It will be years before there is a ruling on drones and we need Nebraska law protections now. If a Nebraska law enforcement agency wanted to enter into the world of drones, it would not be something that would break the bank. The Dragonfly model that has been designed by Georgia Tech students fits into the palm of your hand, weighs as much as a AA battery and costs \$119. That device can be used to hover immediately outside of a window and record what's happening inside the apartment inside. It can be operated from an iPad or a smart phone. This is not technology in a Tom Clancy novel, this is something you can buy off the Internet today. As described on page two of my testimony, of course the real drones tend not to be the palm-sized ones; they're the 50-pound ones being used in Afghanistan by our armed forces. The ShadowHawk drone is being given to local law enforcement agencies with Department of Homeland Security grants. The Montgomery County sheriff in Texas, who you can go watch on-line, we've given you the provision so you can watch the video, says he's particularly excited about using it by weaponizing it. It would be very easy to attach a Taser, a tear gas impact round, or even a standard gun to one of these items. Drones are fine to monitor battlefields in the high security areas in a war situation. They do not belong in Nebraskans' backyards. There is language in some of the other bills that are pending across the country, Senator Seiler, that would make an exception for imminent harm, when a life is at danger, and for search and rescue missions. And the ACLU is supporting those bills as well. [LB412]

SENATOR SEILER: Do you have that language? [LB412]

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AMY MILLER: I have provided it to Senator Schumacher's office, and so they have that. Senator Chambers' concern, the model language in some states also discusses administrative remedies and disciplinary actions for police officers who use this technology. We've provided that to Senator Schumacher's office. We urge you to pass this law because without Nebraska statutes in place, it could be a decade before the Supreme Court or Congress gets around to this; and the drones are already being used in our borders. Thank you. [LB412]

SENATOR ASHFORD: I mean this is extremely disturbing. Senator Lathrop. [LB412]

SENATOR LATHROP: I've got no question. I'm just amazed. [LB412]

SENATOR ASHFORD: Yeah. [LB412]

SENATOR LATHROP: Maybe this though. As I think through the privacy issues, does it matter if this thing is hovering over public property? I get it if...I don't want them in my backyard. I don't want them up peering in my windows. But what if it is somehow in a public place? [LB412]

AMY MILLER: That's a good question. I mean we do have some... [LB412]

SENATOR LATHROP: Does that change anything or maybe the expectation of privacy? [LB412]

AMY MILLER: Maybe not. [LB412]

SENATOR LATHROP: In other words, do we have a column that comes up from our real estate and that column is what we have a privacy interest in and as soon as you get out into the public street does it change? [LB412]

AMY MILLER: I think it does not change. I think your expectation of privacy follows you. And there is some slight hope that that's not just me being crazy with that suggestion. The United States Supreme Court's ruling in U.S. v. Jones, just last year, where D.C. police attached a GPS device to a suspect's car and then were able to keep him under surveillance, discovered he was involved in drug trafficking, and prosecuted him. And he argued the attachment of the GPS tracking device violated my Fourth Amendment rights. And the police said, we could have had a police car following you around and you would have not had an expectation of privacy because you were out in public, just as you're suggesting. The United States Supreme Court said no. If the government uses technology such as a GPS tracking device, the average person has an expectation of privacy, or at the very least that there would have been a warrant involved. And the difficulty is right now police across the country and in Nebraska are arguing, no harm no

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foul, we don't need a...we don't need any type of warrant, we don't need any type of policies because with these other Supreme Court rulings with the helicopter we think we've already been given the green light. But I think if you take that ruling from U.S. v. Jones, that idea of the silo that is following me of privacy gives some hope that when this finally reaches the U.S. Supreme Court they may follow the same rationale. [LB412]

SENATOR LATHROP: Okay. That's a fascinating discussion. [LB412]

SENATOR ASHFORD: Senator Davis. [LB412]

SENATOR DAVIS: Just like Senator Lathrop, I'm amazed at what you presented here today. But I'm curious, this bill deals with law enforcement and some of those things. Don't we have the same concerns as to individuals having this ability? [LB412]

AMY MILLER: This is very interesting that you asked me this, because one of the more unusual invitations I had recently was last month I was asked to speak at the Nebraska Licensed Private Investigators Association annual meeting and they wanted me to present on the boundaries of privacy. And they were very interested about whether, even after the U.S. Supreme Court ruling on the GPS device that applies to the government, can we apply a GPS tracking device? And I had to tell them right now the only thing that would prevent that from happening is if I found someone--my ex, my employer, my creepy neighbor--was using a drone or a GPS tracking device, I could sue them; I could try to get money. But you're right, the dangerous thing about this, and especially when you're talking about the Dragonfly model, which wouldn't break the bank for most people, this also could be something that's being abused by private entities as well. [LB412]

SENATOR DAVIS: Absolutely. [LB412]

AMY MILLER: I think the larger concern is the damage that the government can do. Because if the government has information about me, their punishment or their weight against me is so much more potentially damaging than what my crazy neighbor does. But there is the question as to whether or not banning use of this sort of technology when directed towards another person or building in remedies for a privacy violation, that could be another direction that this bill could go if you are interested in providing further protections. [LB412]

SENATOR DAVIS: Well, I'm thinking business espionage is kind of what I'm thinking. [LB412]

AMY MILLER: Well, and that's why I thought, and again I realize the problem is when I hand out my testimony you don't have the hyperlink, but you can go find it. With the robot Dragonfly, these Georgia Tech students are so excited. And in the video where

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they're trying to encourage people to invest in their product, and I quoted it on the second page, they say, "This is the latest in technology, you can do amazing aerial photography and spy on people." And they say it with this cheerful happy lilt which just gives me absolute chills. But that is what's going to be happening. [LB412]

SENATOR DAVIS: Thank you, Ms. Miller. [LB412]

AMY MILLER: Thank you. [LB412]

SENATOR ASHFORD: Yes, Senator Chambers. [LB412]

SENATOR CHAMBERS: To show how far Americans, in general, have slipped when it comes to feeling they have a right to privacy and not be intruded on by the government they should all read the book 1984. If they haven't read it, they should read it. But when that book came out, people thought that it referred to the Soviet Union and the Communists. So when they talked about Big Brother, that's where it was and they talked about how horrible this is; everything you do Big Brother is watching here, there and everywhere. But now Big Brother is right here. And this is not Agenda 21, by the way. This technology is demonstrated. And as you pointed out, private people can get it. And I think the question was very well taken: Should anybody be exempt from some kind of culpability when they do this? I think that is something that should be considered separately from law enforcement. And what I intend to do, because I know my colleagues don't believe me, they think I make up things, I'm going to show...I'm going to bring some articles to them that were written about how I was being surveilled by the FBI for decades. You know what started them looking at me? When I worked at the Post Office, "when I wore a younger man's clothes," some worker said that because of what I said I had to be a follower of Elijah Muhammad or a Black Muslim. That started a file open on me. They didn't have this kind of technology so they went throughout my neighborhood, talking to my neighbors, not telling them why the FBI is investigating me. I was a student at Creighton; they talked to my professors. And all the professors told me that the FBI had been talking to them and the kind of things they told the FBI that were positive. But I don't know what the FBI may have reported. When I was going to my Reserve meetings, they were asking the ones who were officers, was I disloyal? And I never knew any of this was going on. So now they could have one of these devices following me. I'm not going to do anything illegal or unlawful. My life is an open book. But that doesn't mean I want a cop putting his hands in my pockets or peering through the slits in my blinds. There is such a thing as privacy, your space, your dignity, the integrity of your being as a person. And you certainly should be entitled to that in America. So when you all have these articles on your desks next week, you're going to know why I'm sending them around. People who don't experience harassment by the law enforcement people, the spying, the surveilling, they even had all the records of what I had purchased on credit. And I'm probably the only one in the world who has a sterling credit report from the FBI where they said he pays all of his bills on time. That's

what the FBI...they were spending time doing that. But here is what was really crucial: Several times, and this was when J. Edgar Hoover was in charge and this is in the article, agents were told don't confront him directly because he will embarrass the bureau. They weren't worried about President John F. Kennedy; they weren't worried about his brother, the U.S. Attorney General Robert Kennedy. They weren't worried about Martin Luther King or any of those people. But they singled me out. The director told them don't confront me. So people can think that I'm just blowing smoke, and maybe that's the way it's considered here. But in my community people know that I will stand for us and I'll speak for us and I don't do it behind a gun or with a gang or a whole lot of company; it's just me. People know where I live; they know where I am. I don't speak anonymously. I don't attack from ambush. So I'm in a position to know how damaging these things can be. And then let it, in a small measure, come to the people who think that I'm making this up. Then they cry like a hog with his nose stuck under a gate: I'm being harassed by the police, they're stalking me, they're following me, they're staking me out. I tell them, that's nothing. So by you giving us the information, the footnotes, if we have any interest in pursuing it we can do it. So I appreciate your having come here today. [LB412]

AMY MILLER: I will say that this is one of those interesting nonpartisan issues where people who have been fighting on one side of the political spectrum and the other have come together. The Rutherford Institute, a conservative think tank of the ACLU, have been trying to push legislation in a bipartisan way across the country. I mentioned in the testimony that there are other state legislatures looking at this right now. I'll circulate the model language so all of you can see. But you could also reach out to your colleagues. I love the fact that Missouri, North Dakota, Oklahoma, and Nebraska are looking at this. We are the places with the large wide-open fields that it's hard for law enforcement to get to and there's more of a temptation to use this technology. But with that comes potential abuse. In Seattle, they were wanting to use it in the urban setting in order to control mass protests, in order to control dissenting groups that were speaking out against government activities. But after unilateral outcry, just two, three days ago Seattle said they were shelving the drone project. I'm not sure what they're going to do with the drones now, they spent over \$300,000; but the money is being handed out for free from the Department of Homeland Security and there is a strong lobby, as Senator Schumacher described, trying to encourage law enforcement to buy this. It seems like a good idea. It can be used in a safe way in those necessary situations to protect life, but we need to limit this technology now because otherwise it will get away from us very quickly. [LB412]

SENATOR LATHROP: I'm just going to add this. In the time it took you to testify, I could purchase one of these things for \$350. And they market them... [LB412]

SENATOR ASHFORD: That's what I was doing too. [LB412]

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SENATOR LATHROP: They're noiseless. [LB412]

SENATOR ASHFORD: Yeah. [LB412]

SENATOR LATHROP: Come equipped with a camera, looks like a dragonfly. And you can order one on-line for \$350,... [LB412]

SENATOR ASHFORD: Right. And you can send it out over your... [LB412]

SENATOR LATHROP: ...and it would be right in your neighbor's backyard. [LB412]

SENATOR ASHFORD: Yeah, that's great isn't it? [LB412]

AMY MILLER: It is very scary. The technology...the videos that I watched did show that it is about the size of the palm of your hand, and they said it is so light that... [LB412]

SENATOR ASHFORD: It's like Harry Potter, that thing they used in the...it had the little... [LB412]

AMY MILLER: The snitch. [LB412]

SENATOR ASHFORD: The snitch thing, or whatever they... [LB412]

AMY MILLER: It's exactly like the snitch. [LB412]

SENATOR ASHFORD: They used it for that game they play. And I think everyone should have one. [LB412]

AMY MILLER: Shall I go ahead and put my address in the record so you can all hover outside my house with your brand-new technology? [LB412]

SENATOR ASHFORD: No need for you to put your address. [LB412]

SENATOR DAVIS: We already know who you are and where you work. [LB412]

AMY MILLER: Oh, dear gosh. (Laugh) [LB412]

SENATOR CHAMBERS: One thing more. A stalker could use this, too, couldn't he or she? And if there were a protective order in place and said you stay 100 feet away, it wouldn't affect the use of one of these things to follow a person everywhere she goes, every hour of every day, and record everything. For those people who worry about insurance companies trying to catch them at a moment when they're doing something that seems like they couldn't do if they're injured and they might happen to do

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something that will look like they're not injured. Well, they can put one of these little fellows out there following. You can get rid of private detectives. You've got them everywhere; they're ubiquitous. So people need to understand that this won't just be used on those who are called the bad actors or the bad guys like me, but the good guys. There are not enough bad guys like me to create a multibillion-dollar market. They're to be used on ordinary people doing ordinary things. So if you've got a spouse, if you've got a girlfriend, if you're Mike (sic--Rick) Sheehy and you're doing something other than on the telephone, you better look out. [LB412]

AMY MILLER: It would be interesting to think about paparazzi getting their hands on these as well. Because not just your ex, not just your crazy neighbor, but I suppose a state senator may very well be the type of person that finds things sort of hovering. We may have to develop fly swatters of some sort to deal with them. But I am hearing support for Senator Schumacher's bill. And I'm so glad that that conversation, I hope, then moves out to the floor, because everyone I've spoken to, my mother who frequently disagrees with me on issues, says, Amy, you've got it right this time. (Laugh) So we hope that this bill can move on to General File. [LB412]

SENATOR ASHFORD: Is that it? Thank you. Thanks, Amy. [LB412]

AMY MILLER: Thank you. [LB412]

SENATOR ASHFORD: Do we have any other proponents? Opponents? Neutral? Okay, Senator Schumacher. Wow, you know? [LB412]

SENATOR SCHUMACHER: (Exhibit 2) Thank you, Senator Ashford, members of the committee. It is an interesting discussion. And it even gets more interesting when the issue that Senator Lathrop and Senator Davis raised about how do you regulate these things in private hands. That's beyond the scope of the legislation we have today. This deals with the very narrow thing of how do you regulate them and a beginning of the regulation of them in police and regulatory agency hands. I think being handed out to you now is a copy of the ACLU's suggested language. Again, there's no particular pride in authorship in this legislation, and the committee is certainly invited to put its collective wisdom to work to improve the legislation. But it is something to start with. It is a good starting point. And it gets us ahead of the problem rather than reacting to it after some law enforcement agency has been wooed by a sharp-talking Madison Avenue advertising company into spending hundreds of thousands of dollars for a drone fleet and drone control centers and, I would guess, mobile drone control centers, and maybe even airplane drone control centers. So before that investment is made by local communities, before that gal from the Madison Avenue advertising agency starts making those calls, we can be ahead of the game and we can begin the process of regulating a very important part of our humanity and our privacy. [LB412]



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SENATOR ASHFORD: Thanks. This is very thoughtful. Yes, Senator Davis. [LB412]

SENATOR DAVIS: Can I ask a question? I don't want to belabor this, Senator Schumacher, but these flyovers of these feedlots which have been done, if Nebraska puts this law in place is that going to take care of any of that? [LB412]

SENATOR SCHUMACHER: We have a state agency which we control. We do not have the authority under the supremacy clause to control what the federal government does. So this is...if our Congress could ever get its act together to make any decisions and to do business in a decent way, I would hope that this type of legislation would be on the agenda for the federal level too and federal law enforcement. [LB412]

SENATOR DAVIS: That's what I thought. Thank you. [LB412]

SENATOR ASHFORD: Thanks, Paul. [LB412]

SENATOR SCHUMACHER: Thank you. [LB412]

SENATOR ASHFORD: (See also Exhibits 7 and 8) That concludes the hearing on that bill. Now we'll go to LB611. Senator Pirsch. [LB412]

SENATOR PIRSCH: Thank you, Chairman Ashford and members of the Judiciary Committee. I'm state Senator Pete Pirsch. For the record, my last name is spelled P-i-r-s-c-h. I am the sponsor of LB611. LB611 amends Nebraska's domestic assault statute to expand the definition of serious bodily injury for purposes of domestic assault. There are going to be those who testify after me here today who will kind of flesh out the need for the bill. And I do...including an individual who has experienced domestic violence and who can testify about the role of this language in her life. And so I would answer any questions if anybody had, otherwise I'd defer to those who are going to testify after me. [LB611]

SENATOR ASHFORD: Just a moment. I don't know, does anyone have any questions of Pete, or do you want to wait? Senator Chambers. [LB611]

SENATOR CHAMBERS: Senator Pirsch, this doesn't have anything to do with the substance of the bill, but what I have tried to do when I can get it done, when there will be a series of items listed like this instead of doing it like a paragraph, list them, like, if it's...if it's, like, subsection (8), then would be (a), (b), (c), (d). Then you'd see exactly how many separate items there are. Because sometimes, when it's in a paragraph, two things might be put together as one when the intention is that each one of these stands alone. So would you object to that kind of breaking up of the language? [LB611]

SENATOR PIRSCH: I just wish I had talked to you about this a couple months ago. But

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I think you're right, for clarity's sake and for eliminating ambiguity, it probably is better that way. I don't have any objection. [LB611]

SENATOR CHAMBERS: Okay. [LB611]

SENATOR ASHFORD: Thank you, Senator Chambers. Thanks, Pete. Do we have proponents? Hi. Go ahead. I'm sorry, I was just... [LB611]

HEATHER DUHACHEK: Hi. Okay. Do I just start? [LB611]

SENATOR ASHFORD: Go ahead. [LB611]

HEATHER DUHACHEK: (Exhibit 3) Okay. Mr. Chairman and members of the committee, my name is Heather Duhachek. I'm a licensed mental health practitioner in Nebraska and I'm here representing myself and my children. I was told that I will have three minutes to explain to all of you why I'm here supporting this bill. Three minutes to explain how I went from growing up in a productive middle-class family with no history of violence to owning a gun and living in constant fear for my life and the lives of my family. Three minutes to describe what it feels like to lose complete faith in a system you lived your whole life believing in. To explain what it's like to be pinned to the ground while my children watch the man they call Daddy turn into a monster, the kind that keep children afraid at night. Three minutes to help you understand the desperation of being strangled and then having to frantically cover my head with my forearms to avoid brain damage while he violently slammed both of his fists into my face. The horrified screams of my children begging, Daddy, please stop; Daddy, you're hurting our mommy. That split second when I looked up to see the bottom of a shoe above my face and realized, on my God, he is going to stomp on my face. Three minutes to put into words the explosion of pain that ripped through my entire body when he slammed his foot into my face and the agony of him then grinding his tennis shoe into my eye socket just before rubbing my cheek into the carpet, leaving behind rubber burns all over my face. I did not grow up in an abusive family or stay in an abusive marriage. This happened six months after our divorce was final. I did everything I was supposed to do before and after I was attacked. I filed charges, went to every hearing, answered the same questions over and over again. He was originally facing 14 years. At the end of the day, he was actually behind bars 1 year 9 months and 17 days before we were notified he was being transferred to work release. He could then go on furlough and work in the community where my children and I live. During sentencing, the prosecutor stated this was the worst beating she had seen in 11 years of prosecution. If this was the worst beating and I did everything I was supposed to do, what happens to the victim that got beat up half this bad? How do you expect them to come forward when the law is not protecting them, when the person responsible hardly gets punished and then comes out of jail or prison more angry and vengeful than they went in? Please remember, when you look at my pictures, the law qualified this crime as a misdemeanor domestic assault. In order

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for this to be a felony, he would have had to have used a weapon; and apparently, a shoe being slammed into your face does not qualify as a weapon in this state or he would have had to have caused permanent damage. Unfortunately, the mental damage, which will stay with us for a lifetime, did not qualify. Now I ask, if I was your mother or sister or even your own daughter, would you feel that justice had been served? It is up to all of you to ensure the safety of every Nebraskan. You have the power to give the victims and the children involved in these situations the best chance of a successful future. The system failed us, so now my family will live in fear for the rest of our lives. Please don't fail the next victim that comes behind us. Anybody have any questions? [LB611]

SENATOR ASHFORD: I don't see any questions; thank you. John. [LB611]

JOHN FREUDENBERG: Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief of the Nebraska Attorney General's Office. I'm here today to testify in support of LB611. This bill expands the definition of the phrase "serious bodily injury" in Nebraska's domestic violence statute. It does not affect the definition of that phrase elsewhere in the criminal code. The new language uses definitional theories from several different states. The expanded language will assist in addressing people, who normally are men, who severely beat their intimate partners but don't cause injuries as currently defined as serious bodily injury. Ms. Duhachek's horrifying experience is just such a result. The pictures that she's provided to you--and I believe the ones that she gave are actually colored but the ones you have are black and white which will be not quite as truth-telling, I guess--are horrifying. As you see, the beating was severe but did not reach the level of the current definition of serious bodily injury. The next expanded language would cover such an incident. This bill helps expand the protection for abused, vulnerable individuals who find themselves victims of domestic violence. I'm willing to answer any questions that you may have. [LB611]

SENATOR ASHFORD: I don't see any questions. Senator Chambers does. [LB611]

SENATOR CHAMBERS: Just a comment. I think this has been a long time in coming and it's kind of difficult to know how to catch those, as you say, who have been missed before. But I think this goes a long way. And if I see anything else that should be added, I'll talk to you. But when you consider the fact that people in this situation are victimized because they're with that person, there might be things that outsiders will never understand as to why a person would be around somebody who would do that. They just don't know. So this lifts this kind of viciousness out of that tendency people might have to say, well, why doesn't she leave? Why does she stay there? That shouldn't even be a part of the discussion. If a person is...and I'm not saying this to reflect. If a person is a thousand times over a fool, that does not justify this kind of mistreatment and physical abuse. And when the evidence is as clear-cut as this, if the law was not

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catching it, I hope this will serve that purpose. And I haven't had a chance to really examine it, but if I come up with anything else I'll talk to you. [LB611]

JOHN FREUDENBERG: I would be happy to discuss anything that comes up, Senator; and I appreciate your insight on this. [LB611]

SENATOR CHAMBERS: Okay. [LB611]

SENATOR ASHFORD: Thank you, John. I don't see any other questions. Any other... [LB611]

JOHN FREUDENBERG: Thank you. [LB611]

SENATOR ASHFORD: ...proponents? Yes, sir. [LB611]

JOHN WELLS: Good afternoon, Senator Ashford and members of the committee. My name is John Wells, W-e-l-l-s. I am president of the Omaha Police Officers Association here to testify in support of this bill. Our position is we would like the bill to go farther; that anybody that faces this type of assault, that's injured this badly, we think should...that commits this type of assault that injures someone this badly, should be charged with a felony. But this is a great start, because obviously in these domestic-type situations there's a whole different level of terror involved in these type of situations. And I'd just like to say that it's a very powerful message that Ms. Duhachek sends and that she's extremely brave for speaking out for other victims. [LB611]

SENATOR ASHFORD: I agree with your point, John. It is brave to do that. It's a lot easier not to do it. Thank you. Any other proponents? Any opponents? Neutral. Opponents? [LB611]

KOREY REIMAN: My name is Korey Reiman. I am here on behalf of the Nebraska Criminal Defense Lawyers Association. My address is 650 K Street, Lincoln, Nebraska. We are opposed to LB611. If you look at the suggested change, basically it mimics Nebraska Statute 28-109(20), which is the definition for serious bodily injury. It adds that final sentence there, "or which causes serious temporary disfigurement, unconsciousness, concussion, extreme physical pain, or bone fracture." We suggest that the definition currently for serious bodily injury certainly would have covered some of the testimony that you've already heard here today. If you'll look at it, the definition that currently exists, they don't have to prove serious bodily injury because they can prove that there is a substantial risk of serious bodily injury. I would suggest that there are a various number of statutes, including the first-degree assault statute, that could have been prosecuted, but they chose not to on some of the situations that you've heard of today. The problem that we primarily have with this last sentence that is added is it is so vague that the serious temporary disfigurement, how would a jury be

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instructed of that? You're looking at 1-to-50 because somebody has a black eye. To one juror, is that a serious temporary disfigurement? The problem is this is so vague that the line is so gray between what is first-degree assault and what is a third-degree assault. But when you couple that with the fact that in 28-109(20), the definition of serious bodily injury that you can still prove that when there's the risk, when there's the substantial risk of serious permanent disfigurement or a protracted loss or impairment. So I suggest these are prosecutorial decisions that they chose not to go, and the current law covers that sufficiently. And I'll be happy to take any questions that you have. [LB611]

SENATOR ASHFORD: Senator Chambers. [LB611]

SENATOR CHAMBERS: When you said the last sentence, you mean of the new language on page 3. [LB611]

KOREY REIMAN: Yes, sir. [LB611]

SENATOR CHAMBERS: Which words other than serious temporary disfigurement do you find to be vague? [LB611]

KOREY REIMAN: Well, if a jury was trying to determine extreme physical pain, if a victim, so to speak, gets up there and they have a low pain threshold and describes the immense pain they were under as opposed to another victim who doesn't explain the immense pain that they had, and maybe they're the same exact injuries. Why is one person guilty of a first-degree assault as opposed to the other person who committed basically the same offense, but you're basing it upon the testimony of how much it hurt, that sounds very vague to me to draw a line in between there basing... [LB611]

SENATOR CHAMBERS: Here's where that example breaks down. You're talking about two separate cases which would not be tried at the same time and be there for comparison. You look at the individual who is before you and the questioning by the prosecutor, the cross examination by the defense attorney; then the request for a jury instruction can be looked at by both sides and a determination can be made of what type of jury instruction should be given. But aside from those issues which will be a matter of the trial, how that is handled, I'm looking at the action that took place, the resulting injuries. Sometimes if you blend two ideas together, such as the offense, then the issue of proof, then it might be possible to show that something is very difficult to prove. But that does not indicate that nevertheless the offense should exist, it should be charged if there are facts that seem to support it; and then the prosecutor's job is to try to persuade the jury. But the difficulty of proof should not be the basis, in my mind, of saying we're not going to give guidance here. Serious temporary disfigurement: each of those words by itself could be considered vague. Anything, as you point out, extreme physical pain could be hard to prove. But nevertheless, this opens the way. And ordinarily I'm not for one to have anything in a criminal statute that seems vague. But in

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view of the types of cases that will be presented, most of these people I think, who are charged, are going to try to enter a plea. That's a question. What do you think? [LB611]

KOREY REIMAN: I didn't follow the last part. Most of these people would enter a plea? [LB611]

SENATOR CHAMBERS: Will try to strike a plea bargain. [LB611]

KOREY REIMAN: Oh. Well, I think that occurs on every...well, most cases, I should say. But to answer...to come back to the one concern I have in looking at this language, "serious temporary disfigurement," not to get into much of the weeds but on what is meant by this, is it serious temporary unconsciousness? Serious temporary concussion? Is the "serious temporary" modify disfigurement or does that run throughout? I would suggest every concussion, to some people, is serious and temporary. [LB611]

SENATOR CHAMBERS: That's why I want to set each item apart with either a lower-case letter. And then if under one of the lower-case letters, like the last one, you would use lower-case Roman numerals to make it clear, precisely, which words comprise one element. And that's why I asked Senator Pirsch, would he mind if this would be done? And if we look at it when we go into Exec Session, maybe your position that you express with reference to temporary serious...or serious temporary disfigurement may prevail. But right now I'm not prepared to say that that should go, but it is worth considering. And I promise you that I will consider it, because if I look at the rest of what is covered, I don't know whether that by itself in conjunction with the other statutes you mentioned...are you leaving written testimony? [LB611]

KOREY REIMAN: I don't have anything. I can certainly e-mail you something. [LB611]

SENATOR CHAMBERS: But you could give to the committee the references you made to the other statutes and give a little rationale as you gave us here. [LB611]

KOREY REIMAN: I'll be happy to. [LB611]

SENATOR CHAMBERS: And if it's not sent to the committee, if you send it to me I would appreciate it, because it would help me when the deliberation time comes. [LB611]

KOREY REIMAN: I'll be happy to. [LB611]

SENATOR CHAMBERS: Thank you. [LB611]

SENATOR ASHFORD: Thank you, Senator Chambers. Thanks. Yes, Senator Davis.

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[LB611]

SENATOR DAVIS: Will you send that to the committee? [LB611]

KOREY REIMAN: I will. I will. [LB611]

SENATOR ASHFORD: Thanks. [LB611]

KOREY REIMAN: Thanks. [LB611]

SENATOR ASHFORD: Do we have any other opponents? Neutral testifiers? Senator Pirsch. [LB611]

SENATOR PIRSCH: (Exhibit 4) I'll just approach for the purpose of also asking that if I can, there was a letter in support from the Nebraska County Attorneys Association, and I did want to make it a part of the record. Other than that, I don't have any closing remarks, so. [LB611]

SENATOR ASHFORD: (See also Exhibit 12) Okay. You're next...well, you've got all the bills now. I mean, we don't even have to...now which one are we going with next? [LB611]

SENATOR PIRSCH: I believe LB611, right? Or, I'm sorry. [LB611 LB233]

SENATOR ASHFORD: Because we switched around a little bit. LB233? [LB233]

SENATOR PIRSCH: Yeah, LB233. Yeah, I'm sorry. [LB233]

SENATOR ASHFORD: It's not your fault. [LB233]

SENATOR PIRSCH: And again, thank you, members of the Judiciary Committee, Chairman Ashford. I'm state Senator Pete Pirsch, for the record, P-i-r-s-c-h. I'm Legislative District 4 that I represent. I'm also the sponsor of LB233. And hopefully this won't take a great deal of the committee's time. But there's three changes, I understand, in LB233. It's put forward...there will be a testifier here today from the Crime Commission, director of the Crime Commission. But I'll just briefly mention the three changes in LB233--not great in scope. First change is eliminating the financial needs test for Crime Victim's Reparations program. It will simplify the application process for the victims. And the CVR fund is already the payer of last resort, so as a practical matter it plays no useful purpose. Secondly, it would remove the requirement that the names of all victims who receive compensation under the act are published in the annual report by the Crime Victim's Reparations Committee. We, I know that certainly would provide any information about particular names of those who are awarded--crime

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victims--if the Legislature or Governor has any requests for such. And thirdly, and finally, the bill strikes a particular section that's outdated statutory provisions. And with that, I'd open myself up to any record--I'm sorry--to any questions, knowing that there will be the director who will testify after me. [LB233]

SENATOR ASHFORD: Okay, any questions of Senator Pirsch? Mike. [LB233]

SENATOR PIRSCH: Okay, thank you. [LB233]

MICHAEL BEHM: (Exhibits 5 and 6) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Michael Behm, B-e-h-m. I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly referred to as the Crime Commission. I'm here today to testify in support of LB233. As Senator Pirsch mentioned, this proposes three changes to the Crime Victim's Reparations Act to simplify the application process, protect the privacy of crime victims applying for assistance, and eliminate outdated statutory language relating to the process of issuing awards. I will briefly summarize the three changes proposed in LB233 and then would be happy to answer any questions the committee may have. Section 1 of the bill eliminates the requirements that a crime victim prove that the damages incurred as a result of the crime exceed 10 percent of their net worth in order to be compensated. I've distributed copies of the financial disclosure form which applicants are asked to complete. This is not a simple form, and a number of applicants have difficulty completing it accurately. Eliminating the requirement will simplify the application process for victims and ensure that all crime victims are able to seek reimbursement. Our research also indicates Nebraska is the only state to have this type of financial need test on its Crime Victim's Reparations program. Lastly, the following mechanisms are in place to prevent abuse and make the financial needs test unnecessary: awards under the act are capped at \$10,000 unless vocational rehabilitation is required; victims must utilize insurance and other forms of compensation first; victims must reimburse the fund if they receive additional compensation after receiving an award from the fund; and the Crime Victim's Reparations Fund (sic) is subrogated to a cause of action by the victim against the perpetrator of the offense. Section 2 of LB233 amends Section 81-1833, which requires the Crime Commission to file a biennial report on the Crime Victim's Reparations Program with the Legislature and the Governor. The bill eliminates the requirement that the report include the names of all crime victims who apply under the act, any description of the facts in each case, and provides that the report is to be filed electronically. The inclusion of the names of individuals and the facts of each case in this report is unnecessary and could potentially discourage victims from applying for compensation in order to protect their privacy. The Crime Victim's Reparations Committee will continue to provide information about specific applications to the Legislature or Governor upon request. The final change proposed in LB233 is to strike Section 81-1834, a statutory provision which requires the CVR Committee to certify



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awards to the Department of Administrative Services and directs DAS to issue a warrant for payment from the fund. This statute no longer reflects current practice in which the hearing officer certifies awards and payments are processed electronically through the Nebraska Information System. In closing, I thank Senator Pirsch for agreeing to introduce this bill. I thank the committee for the opportunity to testify this afternoon, and I'd be happy to answer any of your questions. [LB233]

SENATOR ASHFORD: You know, I don't have any questions, Mike, other than just a quick, general question about the fund. Do we track these individuals who receive to see how they do, how their...what their outcomes are or...I mean, we give them a payout, correct? [LB233]

MICHAEL BEHM: Yes. [LB233]

SENATOR ASHFORD: And then is that the final action? [LB233]

MICHAEL BEHM: Sometimes we receive letters back from the individuals to our staff telling us how things are going after that. Some of them we also do funeral expenses, unfortunately. [LB233]

SENATOR ASHFORD: Right. [LB233]

MICHAEL BEHM: There's a \$5,000 cap on the funerals. [LB233]

SENATOR ASHFORD: Funerals. But how many families are you helping now? [LB233]

MICHAEL BEHM: Last year, for example, we had 106 claims that came in, and we were able to award 35 of those at an amount of \$119,807. [LB233]

SENATOR ASHFORD: And again, just remind me--you may have just said it--what is the...how much is in the fund now? [LB233]

MICHAEL BEHM: The fund right now there's...Senator, that's a great question. Right now we receive \$20,000 in General Funds from prison industries; \$24,612 last year, work release; \$130,635...the work release is divided up. Seventy-five percent goes to CVR and 25 percent goes to Department of Correctional Services Work Ethic Camp. Reparations from the court... [LB233]

SENATOR ASHFORD: Hold on just a...just time-out there. I just wanted to remember that. We did that...you were... [LB233]

MICHAEL BEHM: 2010. [LB233]

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SENATOR ASHFORD: Yeah, will you remind me of what we did there? The 25 percent, was that for the... [LB233]

MICHAEL BEHM: The Work Ethic Camp. [LB233]

SENATOR ASHFORD: Program? [LB233]

MICHAEL BEHM: Yes. [LB233]

SENATOR ASHFORD: Is that the one with the community college, Northeast Community? What was that 10 percent used for? [LB233]

MICHAEL BEHM: It's 25 percent. [LB233]

SENATOR ASHFORD: Twenty-five percent. [LB233]

MICHAEL BEHM: Yes. [LB233]

SENATOR ASHFORD: What was that used for? [LB233]

MICHAEL BEHM: I couldn't...I need...I could get that to you. [LB233]

SENATOR ASHFORD: Okay, I can't remember. Maybe Mark knows. I don't know what we...I...we did that 25 percent for Work Ethic Camp? I can't recall what that was... [LB233]

MICHAEL BEHM: It was back on LB510 in 2010. [LB233]

SENATOR ASHFORD: Okay, okay. So the annual... [LB233]

MICHAEL BEHM: The annual amount we had, Senator, was \$219,661. However, the federal government will match 60 percent of what we receive. [LB233]

SENATOR ASHFORD: Okay. [LB233]

MICHAEL BEHM: So we had a total of, last year, available to us of \$349,000. [LB233]

SENATOR ASHFORD: Okay, and that's a significant increase over the last...when we started, in 2007, addressing this. [LB233]

MICHAEL BEHM: Absolutely, absolutely. [LB233]

SENATOR ASHFORD: I can't recall what it was at that time, but it was substantially

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less. [LB233]

MICHAEL BEHM: It was. Well, we were just working off the General Funds that were available to us at \$20,000. [LB233]

SENATOR ASHFORD: Right. Well, and so I think Senator Pirsch is owed a thanks for that. That's really an incredible effort to get that up to that amount, so. I know Senator Pirsch was the leader of that, so thank you. Thanks, Mike. I don't see any other questions. [LB233]

MICHAEL BEHM: Okay, thanks, Senator. Sorry. [LB233]

SENATOR ASHFORD: That's all right. You can take the microphone. [LB233]

MICHAEL BEHM: Sorry, Senator, sorry. [LB233]

SENATOR ASHFORD: (See also Exhibit 9) What...just a second. Is...do we have any other proponents? Any opponents? Any neutral testifiers? Senator Pirsch waives. Okay, let's go to LB280. No, that...yes, LB280. [LB233]

SENATOR PIRSCH: Thank you again, Senator Ashford, members of the Judiciary Committee. I'm state Senator Pete Pirsch. For the record, P-i-r-s-c-h, the sponsor of LB280. LB280 amends Nebraska law to include convictions for violation of any federal law, state law, or county, city, or village ordinance. Such violations must be substantially similar to an offense in violation of Nebraska's domestic assault statutes. So essentially it allows permits within the realm of domestic assault for out-of-state prior convictions used for the purpose of enhancement, so long as they substantially conform to a similar offense in Nebraska under the domestic assault statutes. And I have to...there is a second part to the bill, and I have to apologize. It was an omission not intentional due to the hurried nature of the review of this draft, and for that again I apologize. I do want to call it to your attention so that it is known. There is a second part, and that is LB280, even though it doesn't say on the statement of intent, would also harmonize the domestic violence assault statute with the regular assault statute in the following sense. With respect to first-degree assault under the domestic violence assault statute, that would change, the penalty would, from a Class III felony to a Class II felony; and in so doing, accord and harmonize equally with the regular assault statute. And then secondly...so that was first-degree domestic violence assault. And with respect to second-degree domestic violence assault, that also would harmonize with the regular assault statute. It would change what it is now from a Class IIIA felony penalty to a Class III penalty. The idea is I don't know why there would be a discrepancy between the two penalties. You know, obviously, it's not the policy of the state to somehow view assaulting domestic partners in a lesser manner than they would with a lesser penalty than would be attached ordinarily assault between strangers. And so I view that as just

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kind of a harmonization in clarifying the existence of something that I don't think was originally intended. But with that, I will open myself to questions, if you have any. There will be others to testify after me. [LB280]

SENATOR ASHFORD: Any questions of Senator Pirsch? Yes, Senator Chambers. [LB280]

SENATOR CHAMBERS: Which of us did you call? Oh, Senator Pirsch,... [LB280]

SENATOR ASHFORD: He left, apparently. I...he was... [LB280]

SENATOR CHAMBERS: ...on page 3, in lines 7 through 11, if a person has a prior conviction under this section "or a substantially conforming criminal conviction, then the penalty for a subsequent violation of this section shall be the next higher penalty classification than the penalty prescribed for the current violation of this section." Does that mean that if a person has had a prior, that jumps up to the next higher that might be stated; then if there's a subsequent, then it continues to get higher and higher and higher? [LB280]

SENATOR PIRSCH: That's my understanding, that the...for instance, if... [LB280]

SENATOR CHAMBERS: At this point I'm not going to try to reason through it and ask you the questions, but I'm going to have to do a lot more looking at that to get straight just what's happening. [LB280]

SENATOR PIRSCH: Yes. And there will be someone that will testify to the words,... [LB280]

SENATOR CHAMBERS: Oh, okay. [LB280]

SENATOR PIRSCH: ...and I think that's probably appropriately posed to them. I thank you for raising it though. [LB280]

SENATOR ASHFORD: Yes. Senator Davis. [LB280]

SENATOR DAVIS: You'll have to bear with me, Senator Pirsch. I'm not an attorney so I always have to ask all these sort of mundane questions. But I'm looking at this particular page. Senator Pirsch? [LB280]

SENATOR PIRSCH: Yes. [LB280]

SENATOR DAVIS: And it talks about the penalties. And I'm just a little bit confused about that. So under the domestic assault in the second degree from a Class IIIA, which

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is a five-year sentence. That's the minimum? [LB280]

SENATOR PIRSCH: That's my understanding. You're talking about second-degree. [LB280]

SENATOR DAVIS: But a Class III felony is a one-year sentence? [LB280]

SENATOR PIRSCH: No, I apologize. And if...are you on the...let's see, there's three pages to it. Are you on this...? [LB280]

SENATOR DAVIS: Well, I'm on this white page that you handed...or that came within the packet. [LB280]

SENATOR PIRSCH: And I apologize. For LB280, right? [LB280]

SENATOR DAVIS: Yeah. [LB280]

SENATOR PIRSCH: And I apologize. If I could... [LB280]

SENATOR ASHFORD: Go ahead and take a break and go ahead. [LB280]

SENATOR PIRSCH: If I could... [LB280]

SENATOR ASHFORD: Okay. [LB280]

SENATOR PIRSCH: And I do have to apologize. The sheet of which I believe you're referencing, was that a sheet that was generated by committee legal counsel perhaps, or was that something that was...? [LB280]

SENATOR DAVIS: I'm just confused about what Class IIIA (inaudible). [LB280]

SENATOR PIRSCH: I have to apologize. It's kind of foreign to me. I don't believe I've seen it. My introducer's... [LB280]

SENATOR ASHFORD: LaMont? You're totally absolved from any responsibility, Senator Pirsch, on this matter. I think we have a... [LB280]

SENATOR PIRSCH: Yeah. Yeah, but that is the effect of it. So a Class IIIA... [LB280]

SENATOR ASHFORD: I think Senator Pirsch has the gist of it here, so. [LB280]

SENATOR DAVIS: Is a Class III a less serious crime than a Class...? [LB280]

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LaMONT RAINEY: Yes. [LB280]

SENATOR DAVIS: So why is this minimum five years (inaudible)? [LB280]

SENATOR CHAMBERS: Why don't we do that in Exec and let him testify. [LB280]

SENATOR DAVIS: Okay. [LB280]

SENATOR PIRSCH: And I have to apologize because I don't have that document in front of me and I don't know that I've seen it, but I apologize if I have. But yes, with respect, my understanding is...and that with respect to Class IIIA and Class III, in general, it does...Class III is a greater penalty than Class IIIA in terms of felony. And Class II would be an even greater felony penalty than Class III is. So I think Class III, if I'm recollecting, is up to 20 years and Class IIIA is up to five years. There's no...I don't believe there's any mandatory minimums that are involved there. So it's up to the judge's discretion with respect to the first degree. The Class III felony I believe is up to 20 years and then Class II would up to 50 years; again no mandatory minimums, I don't believe. So I hope that helps. [LB280]

SENATOR ASHFORD: Yes, Senator Seiler. [LB280]

SENATOR SEILER: Senator Pirsch, I have just one question. On these enhancement penalties, are they just proven by...or isn't there anything in the statute that...are they proven by just a certified copy of the previous convictions? [LB280]

SENATOR PIRSCH: Well, there are certain...yeah. So think within the context of it's more regularly enhancements within drunk driving-type of context. [LB280]

SENATOR SEILER: Right. [LB280]

SENATOR PIRSCH: So what it's doing here...you're already allowing for enhancements in Nebraska; that's current law. What this would allow for is substantially complying foreign judge, so Colorado or Iowa or Kansas. [LB280]

SENATOR SEILER: Oh, okay. Again certified copies? [LB280]

SENATOR PIRSCH: So long as they substantially comply with the elements similar to an offense in Nebraska. So if they have different elements, substantially different elements in Colorado and Kansas, and then a prosecutor could not use that as a prior; could not offer it. So what happens is you're convicted, first, of the underlying crime. The judge will schedule it for what's called an enhancement hearing at some later time to determine what's an appropriate sentencing range for you. And so what this bill would do is allow...it wouldn't necessarily preclude for the first time if your offense was in

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Colorado and Kansas. A prosecutor could show that. And you still have certain constitutional rights to challenge that, and it would still have to substantially comply with Nebraska's domestic law--the elements. [LB280]

SENATOR SEILER: You'd have to show they had an attorney at the time of their... [LB280]

SENATOR PIRSCH: What's that? [LB280]

SENATOR SEILER: You'd have to show they had an attorney at the time. [LB280]

SENATOR PIRSCH: Yeah. There are other things that...and it would have to be certified and those...I mean, you know, I analogize it to the DUI. [LB280]

SENATOR SEILER: So that's what I was asking is, are these certified records or are they... [LB280]

SENATOR PIRSCH: Yeah. What I can tell you in my own personal experience, that if it's not a certified copy, then judges in my personal experience haven't... [LB280]

SENATOR SEILER: They're not going to take it. [LB280]

SENATOR PIRSCH: There's not that indicia of reliability... [LB280]

SENATOR SEILER: Okay. [LB280]

SENATOR PIRSCH: ...and they've been excluded. You couldn't use it as basis when...you know...but. [LB280]

SENATOR ASHFORD: Thank you, Senator Seiler. Any other questions? I don't see any. Thanks, Pete. Proponents? [LB280]

PATRICIA FREEMAN: Good afternoon, Senator Ashford, members of the committee. My name is Tricia Freeman, F-r-e-e-m-a-n. I better spell my first name: T-r-i-c-i-a. I am the chief deputy county attorney in the Sarpy County Attorneys Office and I'm also here on behalf of the Nebraska County Attorneys Association in support of LB280. Perhaps I offer the practical impact of allowing out-of-state or foreign judgments to be used as substantially conforming on convictions for purpose of enhancement by way of a case example. We have a young gal, her name is Rosa (phonetic). Rosa (phonetic) moves to Nebraska from California with her husband. There is a history of violence in California, where they come from, and they come here with a thought that this would be a new life; and Rosa (phonetic) is just seeking to escape the violence. The violence continues while she's here in Nebraska, and she flees to Chicago and she sets up a life in

Chicago with their two daughters, and Orrin (phonetic) goes to Chicago and finds her. And while he's in Chicago he assaults her and he beats her, and he's convicted for a misdemeanor assault--domestic assault--in Chicago. Rosa (phonetic) flees from Chicago and comes back to Nebraska because it's what she knows and he follows her back to Nebraska. When he gets back to Nebraska, he assaults her again. And again it's an assault with bodily injury but such that it qualifies as a misdemeanor assault. If this statute were to be in effect, we would be able to use the conviction from Illinois to enhance the penalty of what happens to him here, because what we know about domestic violence and the dynamic is that it's an escalating offense. It's behavior that escalates and the violence tends to escalate in that manner. But because we don't have the ability, at least at this point, to use that foreign judgment, he comes here. He is now convicted for that domestic assault misdemeanor here, which means that if he does it again we can now enhance. But certainly having the ability to take that out-of-state judgment and use it here would certainly impact the penalty and the ability for the state to seek justice for Rosa (phonetic). The other provision that would take the penalties for first- and second-degree domestic assault and harmonize them with the regular assault, again I think that there's certainly a public policy argument that, you know, I can't imagine that we want to say to a domestic assault victim that you're not entitled to, you know, the same justice and the same penalty when you are the victim of a crime that someone else who were to be involved, you know, in a similar event with similar injuries that happen to be a stranger. For example, I have Deb (phonetic), and Deb (phonetic) is an over-the-road truck driver. And Isaac (phonetic) is her estranged husband and he comes to her truck where she is parked at the Sapp Brothers truck stop. And they have a conversation and he realizes that she's in another relationship, and he begins to beat her. And he beats her with both of his fists about her face, and he breaks 13 bones in her face. And she puts her hands up to protect herself, and he tells her that she needs to move her hands and this will go better for her. Under the current statutes, he's guilty or at least can be charged with third-degree...or with first-degree domestic assault, a Class III felony punishable by up to 20 years in prison. If it were to be a bar fight and they were to be total strangers, he could be punished by up to 50 years in prison. The fact that she is an intimate partner should not distinguish the penalty that is potentially available to them. I would answer any questions. [LB280]

SENATOR ASHFORD: Senator Seiler. [LB280]

SENATOR SEILER: Yes, ma'am. Is there a stale date on these convictions that after five years or ten years you cannot enhance? [LB280]

PATRICIA FREEMAN: No, sir. At least not the way that the law is written. The law is written to say that. [LB280]

SENATOR SEILER: Okay. I think in drunken driving, don't they have a stale? [LB280]



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PATRICIA FREEMAN: Fifteen years... [LB280]

SENATOR SEILER: Fifteen years. [LB280]

PATRICIA FREEMAN: ...under the drunk driving. Yes. [LB280]

SENATOR SEILER: Okay. Thank you. [LB280]

SENATOR ASHFORD: Good comments. Thank you. I don't see any other questions. [LB280]

PATRICIA FREEMAN: Thank you. [LB280]

SENATOR SEILER: Any other proponents? Opponents? [LB280]

KOREY REIMAN: Again my name is Korey Reiman. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. Generally, the defense lawyers don't get into the policy positions regarding the sentencing scheme, and I certainly am not going to argue that a domestic partner should be punished less than that. But I guess generally we are opposed to when these sentencing schemes become so onerous that they become the tail that wags the dog, and you start getting into almost a federal system where the sentence drives what happens. And I would suggest this is one example where we are starting to head down that path. I would also indicate regarding the priors, and I don't know if this was on purpose or not, but I believe the Legislature usually calls them substantially similar instead of substantially conforming. And I don't know if there's a distinguishment there but certainly being around lawyers there's going to be an argument that you don't mean the same thing. Also I believe on our DUI priors, there's actually in 60-6,197.02, you lay out how they can prove that prior to make it fair for both sides to make sure it's in the interest of justice. And as we were talking back there, this bill does not necessarily do that and that we should have...we're hoping for at least some guidance to make sure a prior conviction is only used when it's fair and the person has got a fair hearing on the previous one. [LB280]

SENATOR ASHFORD: Thank you. I don't see any questions. Thank you, sir. [LB280]

KOREY REIMAN: Okay. Thank you. [LB280]

SENATOR ASHFORD: (See also Exhibit 10) Any other opponents? Neutral? Senator Pirsch. Senator Pirsch waives. You have the next bill which is LB607, right, which would be the final bill of the day unless I'm looking at the wrong bill. [LB280]

SENATOR PIRSCH: And Chairman Ashford and members of the committee, I'll be very brief on this one. There's some additional complexity involved in this particular bill,

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original concept than I had originally anticipated as drafted. This bill is not ready for prime time. And so I know the Judiciary Committee has a heavy flow of bills and I don't think probably an appropriate day to use your scarce time to try to look at this matter. So with apologies, I will ask for this committee to IPP the matter for the year and we'll work on the concept over the interim. And certainly any apologies... [LB607]

SENATOR ASHFORD: Well, you probably don't want us to IPP. You just want us to hold it. [LB607]

SENATOR PIRSCH: Well, if you would then, yes. That would be wonderful... [LB607]

SENATOR ASHFORD: Yeah. Okay. [LB607]

SENATOR PIRSCH: ...and give us that... [LB607]

SENATOR ASHFORD: Then you don't have to introduce it again. [LB607]

SENATOR PIRSCH: Yeah, yeah. That's probably a good idea. And then we can... [LB607]

LaMONT RAINEY: Well... [LB607]

SENATOR ASHFORD: Well, what? [LB607]

LaMONT RAINEY: If he changed it substantially. [LB607]

SENATOR ASHFORD: Well, that's all right. You're not going to change...that's fine. We'll just hold it until you let us know. [LB280]

SENATOR PIRSCH: Okay. Well, I do appreciate it and that is all I have unless there's... [LB607]

SENATOR ASHFORD: Do you care to close on this last one? [LB607]

SENATOR PIRSCH: I would probably waive this closing on the last one. I'd appreciate it. [LB607]

SENATOR ASHFORD: (See also Exhibit 11) All right. Well, have a nice Valentine's the rest of the day, everybody. [LB607]