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Transcriber's Office

Judiciary Committee
January 23, 2014

[LB706 LB707 LB752 LB822 LB828]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 23, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB707, LB706, LB822, LB752, and LB828. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Amanda McGill; and Les Seiler. Senators absent: Colby Coash; and Al Davis.

SENATOR ASHFORD: Why don't we get started. Good afternoon. We have five bills today starting with Senator Conrad's LB707. And she is here, so welcome, Senator. [LB707]

SENATOR CONRAD: (Exhibit 1) Thank you. Good afternoon. Chairman Ashford, members of the committee, my name is Danielle Conrad, that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. As you know, I represent the "Fightin'" 46th Legislative District of north Lincoln, and I am here today to introduce LB707. January is National Stalking Awareness Month, and the Attorney General's Office and I have partnered to bring together LB707, legislation that makes stalking and harassment separate and distinct crimes. The National Center for Victims of Crime reports nearly 6.6 million people over the age of 18 will experience stalking in a one-year period and 76 percent of those victims are women. Currently in Nebraska, harassment and stalking are the same offense. This legislation makes clear that stalking is an escalated form of harassment and warrants an increased penalty. Additionally, when an electronic communication device is utilized to stalk or harass, LB707 specifies that the venue for prosecution is proper either where the communication originated or where it is received. This mirrors the electronic child enticement venue provision. Current law does not specify the proper venue for stalking or harassment when an electronic communication device is utilized. With mobile communication devices it is nearly impossible to determine exactly where the offender is located when he or she makes threats to the victim. This legislation clarifies for purposes of venue that the communications may be deemed to have taken place where they were received. Finally, LB707 clarifies that prior out-of-state offenses of sexual assault can be considered by the court for admissibility pursuant to Nebraska Revised Statute 27-414 which confirms to the Federal Rules of Evidence. Let me provide an example about why this is important. A South Dakota man was prosecuted in Nebraska for sexually assaulting his stepdaughter in Nebraska. He had also sexually assaulted her South Dakota. Under this bill, the prior South Dakota assault could be used as evidence where it may have been previously inadmissible. The current narrow evidentiary limitation to only prior Nebraska offenses hinders the prosecution of those that have been victimized...of those who have victimized others in two different states. Excuse me. I will close and I will defer more specific questions to the Attorney General's Office who is here today. Also, Chairman Ashford, for the record, I've passed around...had the page pass around a letter of support from the Domestic Violence Council for your consideration. And I'm happy to answer any questions. [LB707]

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SENATOR ASHFORD: Thank you, Senator Conrad. Any questions of Senator Conrad? I think Senator Robak was the first stalking person... [LB707]

SENATOR CONRAD: Is that right? [LB707]

SENATOR ASHFORD: ...person in the old days of many years ago, so. [LB707]

SENATOR CONRAD: Well, then indeed I stand on the shoulders of giants... [LB707]

SENATOR ASHFORD: Yes. [LB707]

SENATOR CONRAD: ...in moving the ball forward on this important issue. [LB707]

SENATOR ASHFORD: Well, I think you're both giants. But thank you, Senator Conrad. [LB707]

SENATOR CONRAD: Yes. [LB707]

SENATOR ASHFORD: Let me...any questions? Anyone? [LB707]

SENATOR CONRAD: No. [LB707]

SENATOR ASHFORD: Okay. No, I don't see any. [LB707]

SENATOR CONRAD: Great. Well, that's good because I was telling the Attorney General's Office previously that my criminal law work is very limited to a small clerkship at the Seward County Public Defender's Office my second year of law school. So I definitely do not pretend to be an expert, but rather a student, in this regard. And I'm happy to partner with the Attorney General's Office on an important matter. [LB707]

SENATOR ASHFORD: Thank you, Danielle. [LB707]

SENATOR CONRAD: Thank you. [LB707]

SENATOR ASHFORD: John, let me go around...Senator...go ahead and sit down. I just want to introduce my colleagues: Steve Lathrop from Omaha; Amanda McGill from Lincoln; Diane Amdor who is committee counsel; Oliver VanDervoort is our committee clerk; Mark Christensen is from Imperial; and Senator Seiler from Hastings. So welcome, John. [LB707]

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 for the Nebraska Attorney General's

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Office. I'm here today to testify in support of LB707. This bill strengthens Nebraska's response to sexual assaults and domestic violence. As is commonly known, sexual assaults and domestic violence are crimes of power and control where the strong victimize the weak. LB707 addresses two basic issues. The first involves transient sex offenders and domestic abusers. State lines are of no significance to sexual and domestic predators. They will pursue their victims across state lines or move to Nebraska to find new victims. Nebraska's state boundaries should not be allowed to act as a shield for them. Nebraska currently allows the use of an offender's prior offenses of sexual assault as evidence in subsequent prosecutions. LB707 clarifies that both Nebraska and out-of-state offenses are eligible for use. This issue continues to become of greater concern as our society becomes more mobile. It is common to discover prior sexual assaultive activities occurring both within and outside of Nebraska when we are prosecuting sexual assault matters. The federal authorities and courts have agreed that the use of this type of evidence is appropriate in sexual assault trials. The bill further addresses transient serial rapists, abusers, and stalkers by allowing their prior criminal activities to act as punishment enhancements in subsequent sexual assaults, domestic assaults, and stalking prosecutions. Currently, only prior in-state convictions are allowed to be used. Finally, with regard to the issue of mobile offenders, LB707 establishes that proper venue for filing of charges can be established either where the offender sends a threatening message or where the victim receives it. The use of smart phones or other devices makes it nearly impossible to locate where an offender was when he sent the threat. The second issue the bill addresses is stalking. There are various reasons which ignite stalking situations. Most start small but are allowed to grow and fester because of the lack of adequate criminal remedies to address them early on. LB707 offers a solution by creating the offense of harassment which is a Class II misdemeanor. A second or subsequent offense would be a Class I misdemeanor. These new offenses provide a tool to be used to intervene early, as opposed to waiting until the stalking escalates. Unfortunately, we know that there are some who still will not modify their behavior and continue with a pattern of harassing misconduct, even after the court's intervention. For those, stalking will still exist as a strengthened felony option. This is a quick overview of the bill and I'm happy to answer any questions you may have. Thank you. [LB707]

SENATOR ASHFORD: Any questions of John? [LB707]

SENATOR LATHROP: Can I ask just a brief question? [LB707]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB707]

SENATOR LATHROP: On page 3, line 12, "course of conduct" previously meant a pattern of conduct composed of a series of acts over a period of time, however short, evidencing the continuity of purpose. Is that former language, was that from...why are we striking that, I guess? [LB707]

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JOHN FREUDENBERG: It was...the... [LB707]

SENATOR LATHROP: Don't we want to show some connection from one to the next? [LB707]

JOHN FREUDENBERG: Actually, there is a new change of a...a new definition given earlier on in the...I apologize. That is the change in definition that we're talking about. The purpose of conduct, we have changed it just to a specific number of being two more acts, and I believe that's just to tie it back into the overall pattern we're trying to establish with the new harassment offenses. Previously...oh. [LB707]

SENATOR LATHROP: But doesn't evidencing the continuity of purpose require that there be some...that the events have some relationship and they show some MO. [LB707]

JOHN FREUDENBERG: That could be. You're...Senator. [LB707]

SENATOR LATHROP: And are we getting away from the requirement that you show a pattern in favor of showing multiple offenses without the necessity of a pattern? [LB707]

JOHN FREUDENBERG: I don't believe we're getting to that, but that's definitely something that we could work on the language a bit if it's not clear. I agree it's important. [LB707]

SENATOR LATHROP: Don't you think that's necessary? I mean, the...if you're going to show prior bad acts, you've got to be able to show that it fits some pattern and not just that somebody committed a half a dozen bad acts that have no pattern to them. [LB707]

JOHN FREUDENBERG: This is actually going to the harassment portion of the bill, not the prior bad acts. This is going to a series of events leading to a stalking charge. But I do agree a pattern, a purpose is appropriate. And if that's not clear in this language I would be willing to work with people and Senator Conrad's office to see if we can clear that up. [LB707]

SENATOR ASHFORD: John, what did we do...what did...within the last year or so we...or at least I thought we addressed some of the electronic communication issues. Do you remember what we did in that regard? [LB707]

JOHN FREUDENBERG: We've touched on electronic communication issues on a number of bills over the last two or three years. [LB707]

SENATOR ASHFORD: But on...as it relates to harassment, did we...? [LB707]

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JOHN FREUDENBERG: The last one I recall is we...I believe is the one where certain senators were actually being harassed and we reviewed options to address that, but I don't believe that actually moved forward. [LB707]

SENATOR ASHFORD: Okay. [LB707]

JOHN FREUDENBERG: If there's another bill you're thinking of, I'm not remembering it. [LB707]

SENATOR ASHFORD: But we're talking...but in this regard we're talking about any...we're adding electronic communications to the stalking statute. [LB707]

JOHN FREUDENBERG: They're already there. [LB707]

SENATOR ASHFORD: Right. [LB707]

JOHN FREUDENBERG: We can use those now. [LB707]

SENATOR ASHFORD: But we're talking about a pattern now of violation and enhancement of penalty. [LB707]

JOHN FREUDENBERG: Correct. [LB707]

SENATOR ASHFORD: That's really what we're doing here? [LB707]

JOHN FREUDENBERG: That, and also establishing the proper venue. [LB707]

SENATOR ASHFORD: Right, the venue part, but... [LB707]

JOHN FREUDENBERG: Right. [LB707]

SENATOR ASHFORD: I mean we're essentially taking what we did...we added to stalking the, obviously, the modern equivalent or whatever... [LB707]

JOHN FREUDENBERG: Correct. [LB707]

SENATOR ASHFORD: ...and then enhanced the penalty... [LB707]

JOHN FREUDENBERG: Correct. [LB707]

SENATOR ASHFORD: ...for subsequent offenses. Okay. I don't think I have anything else. Anything else? Senator Seiler, you have anything? Thanks, John. [LB707]

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JOHN FREUDENBERG: Thank you. [LB707]

SENATOR ASHFORD: Dave. [LB707]

DAVID PARTSCH: Good afternoon, Chairman Ashford, Senators of the Judiciary Committee. I...my name is David Partsch, P-a-r-t-s-c-h. I'm the Otoe County Attorney from Nebraska City and I'm the chairman of the legislative committee of the Nebraska County Attorneys Association. And I am here to testify in support of LB707. I would like to, I guess, emphasize or particularly address the third aspect of the bill that senator mentioned that was the 27-414 rule regarding prior bad acts or prior sexual assaults of children and making sure that that applies across state lines. Personally, I have an interest, being from Otoe County which is a border county with Iowa, and seeing offenders on one side of the state line that are treated differently from offenders that are...have committed all of their acts in Nebraska. And those that are from another state, I think, as an issue of fairness, should be treated the same as those that we treat, those that are...have all occurred within the state. So it's a fairness issue to the victims particularly in these crimes that if you have an offender that's committed these prior offenses we ought to be able to use them no matter where they were occurred. [LB707]

SENATOR ASHFORD: And under prior law we...maybe I... [LB707]

DAVID PARTSCH: Well, the law as it's written now... [LB707]

SENATOR ASHFORD: You...were you able...I mean, I never really...I guess I didn't realize you couldn't bring in an offense, a certified document. [LB707]

DAVID PARTSCH: The way that 27-414 is currently written is it references prior sexual assault. But then after...it says a sexual assault under Section 28-319, for example. [LB707]

SENATOR ASHFORD: Which couldn't occur in Iowa. [LB707]

DAVID PARTSCH: Right. [LB707]

SENATOR ASHFORD: I got you. Okay, so it's...all right. Okay. [LB707]

DAVID PARTSCH: And it would be similar to our DUI laws that apply across state lines as well,... [LB707]

SENATOR ASHFORD: Okay. [LB707]

DAVID PARTSCH: ...as long as the statute in the other state is similar to ours... [LB707]

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SENATOR ASHFORD: Right. [LB707]

DAVID PARTSCH: ...that it could be applied here as well. [LB707]

SENATOR ASHFORD: Okay. Senator Seiler. [LB707]

SENATOR SEILER: Thank you, Mr. Chairman. I have a question on the evidence itself. Would that come in under certified copy of the transcript of the conviction under Rules of Evidence or do you need to have something...I don't see a procedure inside this particular area. Is the...have you checked to see if the normal certified copy is good enough to become admitted or do you need something under this law? [LB707]

DAVID PARTSCH: Typically, we would have additional...I mean we can require or we can subpoena the victims from others...other offenses to testify as well. [LB707]

SENATOR SEILER: But if you were just going to put in the conviction, under the old law used years ago, you used to have to get a certified copy and a certified copy from the prison showing that he served at least one day. [LB707]

DAVID PARTSCH: Right. And this bill does not change any of the current procedures. [LB707]

SENATOR SEILER: That procedure will apply to this type of case? [LB707]

DAVID PARTSCH: I think this procedure is different because this is under the newer law that allows evidence of prior sexual assaults. So it could be a certified conviction, I think. [LB707]

SENATOR SEILER: Okay. I didn't know if you needed to have that here or not, or at least a reference to it. [LB707]

DAVID PARTSCH: No, I don't believe so. [LB707]

SENATOR ASHFORD: There seems to be some gnashing of teeth and shaking of heads somewhere back in the...maybe we can...we'll confer and discuss. Thank you. [LB707]

DAVID PARTSCH: You bet. [LB707]

SENATOR ASHFORD: Thanks, David. Okay. Yeah, David, do you want to...can you...do you want to speak on that for a moment or do you... [LB707]

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DAVID PARTSCH: Me? [LB707]

SENATOR ASHFORD: Yeah. Or, John, I'm sorry. Do you have any...answer Senator Seiler's question. [LB707]

JOHN FREUDENBERG: Once again, this is John Freudenberg. (Section) 27-414 sets forth the procedure. This is closer to a 27-404 type hearing,... [LB707]

SENATOR ASHFORD: Oh, okay. [LB707]

JOHN FREUDENBERG: ...as opposed to the use of an out-of-state conviction in the normal sense. This doesn't actually have to be a conviction, it can be an offense, but the procedures that's set up is you have to give notice of this...the intent to use this type of evidence and then you have to go through a pretrial hearing with the court and prove by clear and convincing evidence that this incident did occur, that it has significant similarity to the prior incident, and that it is relevant to the issues that you're bringing in this matter. [LB707]

SENATOR SEILER: So this actually goes further than just a conviction. [LB707]

JOHN FREUDENBERG: It does, it does. And like I said, this is current law. [LB707]

SENATOR SEILER: That's what I... [LB707]

JOHN FREUDENBERG: We could already do that right now with in-state matters. We just can't necessarily use it with things that happened out of state. [LB707]

SENATOR SEILER: Okay. That's what I wanted to talk about. Thank you. [LB707]

JOHN FREUDENBERG: All right. Thank you. [LB707]

SENATOR ASHFORD: Thanks, David (sic). [LB707]

JOHN FREUDENBERG: Do I...be excused? [LB707]

SENATOR ASHFORD: You may be, yes. Anyone else want to testify for this bill? How about against it? Neutral? Or against it, we have one against here. [LB707]

DENISE FROST: (Exhibit 2) Good afternoon. Members of the committee, my name is Denise Frost and I'm an attorney in Omaha. I'm here today on behalf of the Nebraska Criminal Defense Attorneys Association. Your page is circulating around a letter that I wrote a few days ago to Senator Conrad just expressing some of the concerns that we have with this. Senator Seiler, I think you've kind of hit the nail on the head. I think one

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thing to take great care with in this bill is the interplay with these proposed amendments, with 27-404(2) of the Rules of Evidence. There's a lot of lawyers on this committee and so we all know that that pendulum swings back and forth in terms of how the high court handles that type of evidence. It's a pretty particular type of evidence. Specifically, one of the bases of our objection to LB707 is, as set forth in my letter, I don't think we need to make that change that's referenced in Section 1 that refers to conduct prohibited by the laws of this state or any other state or federal law. This body knows better than anyone what the shades of gray are among how sexual misconduct, be it assault, contact, how it's graded, how it's defined in other jurisdictions. I think that we've got to be really careful with evidence of this type. 27-404(2) at the present time provides all the protection that any prosecutor needs and all the process on how to handle that type of evidence. I think there is a vagueness problem because, as this is, it could be anything, and I think that is problematic, as noted. Certainly the courts in this state are not shy about allowing 27-404(2) evidence or 27-413 evidence. I gave you a citation to a case that's less than a year old. Another point that is of great concern to us is the increasing the penalties. I think that, you know, there's no doubt everybody worries about crime and punishment. But if you are a student of the law as applied, as I know you are, what you see...look at the cases that I've cited here. Most times you are going to see these types of offenses stacked with other offenses. And courts don't hesitate to exercise the power to impose consecutive sentences. There is no need to increase penalties for these types of crimes and, respectfully, I think it's pretty antithetical to some of the competing interests in this state. If we're going to increase and start making more crimes that require imprisonment, where do you get the money to house those people? There is no need to change the law when it comes to sentencing. I would ask that my comments that have been circulated to you be made a part of the record, but those are the reasons that the Criminal Defense Attorneys Association opposes the bill. Thank you. [LB707]

SENATOR ASHFORD: Thanks, Denise. Any questions of Denise? I don't see any. Thanks for your comment. [LB707]

DENISE FROST: Thank you. [LB707]

SENATOR ASHFORD: Any other comments opposing the bill? Neutral testimony? Senator Conrad, do you...closing? No closing, okay, thank you. Let's move on to LB706, Senator Harr here. [LB707]

SENATOR HARR: Chairman Ashford, members of the Judiciary Committee, I am Senator Burke Harr. I represent midtown Omaha which comprises of Dundee, Benson, and Keystone neighborhoods. I am bringing LB706 on behalf of the Attorney General's Office. Every time someone downloads or attempts to download child pornography, it revictimizes the child involved. LB706 works to hold accountable those who knowingly solicit or attempt to solicit images of child sexual assault. Under current Nebraska law,

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possession, manufacturing, or distribution of child pornography is unlawful. It is, however, not unlawful under current Nebraska statute to knowingly solicit or knowingly receive it. LB706 amends the current law, eliminating this loophole, and allows for all property involved in the offense be subject to forfeiture by action of the state. The bill creates a procedural standard for forfeiture and destruction of any property used in the crime, such as computer or data storage devices. There would be a process for perpetrators to request the return of noncriminal data files, such as tax or business records, before the property is destroyed. LB706 allows out-of-state convictions to act as penalty enhancements in child enticement or child pornography prosecution. Lastly, LB706 criminalizes the act of knowingly causing a child to be placed in a situation to view a live sex act by specifically classifying it as child abuse. Currently, similar conduct is prohibited if it occurs via electronic communication, but it is not prohibited if it applies in person. With this bill, Nebraska would join 13 states, along with federal law, where it is unlawful to solicit child pornography. Fourteen states have penalized the receipt of child pornography; 15 states that allow for forfeiture actions involving child pornography; 11 states where it is unlawful to knowingly or intentionally place a child in a situation to view a live sex act; 8 states that make convictions of attempt a sentence enhancement; 6 states that make out-of-state convictions an enhancement; and 5 states that provide the specific forfeiture process. I would ask that you advance LB706 out of committee and I would be happy to answer any questions you may have. [LB706]

SENATOR ASHFORD: Senator Chambers. [LB706]

SENATOR CHAMBERS: Senator Harr, are you going to prioritize this bill? [LB706]

SENATOR HARR: I have not made a decision on my priorities yet. [LB706]

SENATOR CHAMBERS: This is designed to go after property that is involved in child pornography in various stages and various ways. Is that true? [LB706]

SENATOR HARR: That is correct. [LB706]

SENATOR CHAMBERS: Is it felt that that will somehow diminish the amount of child pornography that's going to be produced, disseminated, and whatever else is done with it? [LB706]

SENATOR HARR: That is the hope. [LB706]

SENATOR CHAMBERS: You know what troubles me, Senator Harr? I come from a community, and I've talked about it on the floor of the Legislature, where guns wind up in the hands of very young black people. And I've said it disturbs me that the Attorney General's Office, FBI, I mentioned federal agencies by name, local police, the State Patrol, they come in when they're talking about alcohol use by young white children.

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They talk about these...for ease of reference, talk about these so-called designer and new drugs, variations they want to track down and stop the source of it. But not one of them is interested in going after the source of guns that kill children in my community. I'm not going to support any of these bills until I see the same concerns shown about going after the source of the guns. Some people may say, well, this is important, these other bills. They're not a matter of life and death, as is happening in my community. And I didn't just start talking about it when young Payton Benson was killed the other day. In fact, I was talking about it on the day that she wound up being killed and still nobody is concerned. Every one of these bills that goes after any of these kind of things, when they try to create new crimes, I'm going to oppose every single one of them, just so that everybody in this room has notice. And if a bill is not prioritized, it certainly is not going anywhere. And when they try to create new crimes, create "niche" crimes, as I call them, where they name certain groups and professions and say it's going to be a special crime if somebody does this to you or against you, those I don't like either, not just for the reasons I mentioned. But they want to say that if you have a certain job, then you are more important than ordinary citizens. Or to put it conversely, the ordinary citizen is not as important as you. So we should say we're going to have a special crime if assault is committed against the butcher, the baker, the candlestick maker, for the floor walker in Walmart, for the street sweeper, for the garbage collector. And pretty soon you're going to say, well, there's a special niche for everybody. I'll say, that's why we need a general law that relates to assault and it applies to everybody. I think this idea of proliferating crimes--and now this is aside from the gun issue--is not going to be the kind of thing that I think is going to benefit society. But it's good for politicians who are running for office because they can say, I'm against child abuse. But there are cases that can be brought to them and they won't do anything about prosecuting it. So I'm saying it because you're a senator and you can take it and you're paid a big salary to hear these kind of things. But everybody else can hear it and it won't be necessary for me to say it over and over. But if somebody from law enforcement comes here, I'm going to say it to them. And that's why I'm not going to ask you any specific questions, because if it looks like the bill will go anywhere, you and I can talk about those kind of things later. [LB706]

SENATOR HARR: Thank you. I appreciate that comment. [LB706]

SENATOR ASHFORD: Yes, Senator Seiler. [LB706]

SENATOR SEILER: Senator Harr, if I read this bill correctly, the idea of the forfeiture is placed on the defendant for hearings, asking for hearings. The only thing the prosecutor does is list everything he's going to take. If you can go so far as to say that the court shall enter an order if nobody shows up and has no separate hearings, I don't think that's the structure of forfeiture law in the state of Nebraska or under the federal law. I think that's the duty of the prosecutor. [LB706]

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SENATOR HARR: I think it does require the prosecutor to notify the owner. You know, one...I'll even say we need to go a step further because I think we probably should notify the lienholders if there is a lienholder on any of the items. [LB706]

SENATOR SEILER: Well, I was kind of following the description that was handed out with... [LB706]

SENATOR HARR: Oh. [LB706]

SENATOR SEILER: And it says, shall order the property be forfeited without a separate hearing. [LB706]

SENATOR HARR: Yeah. [LB706]

SENATOR SEILER: And it goes into defendant or any person may request a hearing. [LB706]

SENATOR HARR: So, yeah,... [LB706]

SENATOR SEILER: But the hearing should be on the obligation of the prosecutors, unless the law is different than what was handed out as informational sheet. [LB706]

SENATOR HARR: Okay, yeah. If you're on page 3, line 9, it says, the prosecutor shall provide written notice of the forfeiture proceeding and a list of the properties sought to be forfeited to the defendant and any person with an ownership interest in the...such property. [LB706]

SENATOR SEILER: That's right. That's where it starts. [LB706]

SENATOR HARR: Yeah. [LB706]

SENATOR SEILER: And it does that within 30 days prior to... [LB706]

SENATOR HARR: Sentencing. [LB706]

SENATOR SEILER: ...the sentencing. But when it comes to the time for a hearing in that period of time, then they...the way you've got it written, and I just want to make sure I'm reading it correct, that the defendant then has the burden of setting the hearing and making all the requests for those hearings. [LB706]

SENATOR HARR: For any person claiming an ownership interest. [LB706]

SENATOR SEILER: Right. [LB706]

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SENATOR HARR: Yes. [LB706]

SENATOR SEILER: And that's your intent. [LB706]

SENATOR HARR: I think I... [LB706]

SENATOR SEILER: See, I believe the forfeiture law should be run by the prosecutor, including those hearings. [LB706]

SENATOR HARR: Yeah. Well, and I'm open to amendments. [LB706]

SENATOR SEILER: Okay. [LB706]

SENATOR HARR: As I said, I brought this on behalf of the Attorney General's Office. [LB706]

SENATOR SEILER: I just wanted to make sure the analyst correctly interpreted your bill. [LB706]

SENATOR HARR: Yeah. Yeah. I think that's probably right, yeah, and so... [LB706]

SENATOR SEILER: Okay. I have no further questions. [LB706]

SENATOR ASHFORD: Thanks. Senator Chambers. [LB706]

SENATOR CHAMBERS: One other one. Senator Harr, did you draft this bill or did the Attorney General's Office draft it? [LB706]

SENATOR HARR: The Attorney General's drafted... [LB706]

SENATOR CHAMBERS: Strike two. (Laughter) We always have those kind of problems. [LB706]

SENATOR ASHFORD: Thank you, Senator Harr. [LB706]

SENATOR HARR: Thank you. [LB706]

SENATOR ASHFORD: Any proponents? The Attorney General's Office. [LB706]

COREY O'BRIEN: Good afternoon. Mr. Chairman, members of the Senate (sic) Judiciary Committee, my name is Corey O'Brien, that's O-'-B-r-i-e-n. I'm an Assistant Attorney General with the Nebraska Attorney General's Office and the section chief with

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the criminal prosecution division of the AG's Office. As Senator Harr elicited, I'm here to support LB706. There are four provisions in LB706. It's part of efforts that we've started as long as I've been in the AG's Office, about nine years, with continuing to try to close some of the loopholes with respect to computer crimes, child pornography, on-line enticement. There is four key provisions that Senator Harr talked about. One is the provision related to using out-of-state convictions for purposes of enhancing the sentences. Currently, the law reads that prior convictions for sexual assault...for sexual assault or on-line enticement or child pornography, they be committed in the state of Nebraska in order to enhance those crimes. As reason has taught us, the offenders of these crimes commit those crimes in other states and we think that they should be subject to enhancement, just as the offenders that commit those crimes in state. Second, the second piece of LB706 that we think is important is adding to our child abuse statutes with respect to sex acts committed live or in front of children. Some of us may go, well, that's not really necessary. And I want to point out a case that I handled that was in the news, a lady from Franklin, Nebraska, who solicited her own children on Craigslist for the purposes of holding them out to have men come and have sex with the minor daughters. She would frequently have sexual relations with the daughters...I'm sorry, with other men in front of the daughters in order to teach them how they should act with paying customers. And that is not a crime in our state and we do believe that it should be. The next provision that we have added is the receipt or solicitation of child pornography. The purpose behind that is we have several offenders who like to go into places like public libraries and watch child pornography videos. They have argued that they're not in possession of those videos, that they're simply on the hard drive of the computer there and, therefore, they're not in possession, they're simply viewing. And this portion of the bill is designed to...for those offenders and close that loophole. Finally, we have the provision in there with respect to contraband and I know that that's been talked about a little bit before me. It's not a forfeiture provision similar to what we have in the drug field or the gambling field. But basically, this is designed to give us some guidance in terms of what we do with the property that's used to facilitate these crimes, the computers, the photos--I'm sorry--the cameras, the video machines, things of that nature. I look forward to answering any questions you have and I certainly would be more than willing, and I know my office would be willing, to work with the committee in resolving any problems that there are with this bill. Thank you. [LB706]

SENATOR ASHFORD: Thanks, Corey. I don't see any questions. Thank you. Yeah, Senator Seiler does, actually. [LB706]

SENATOR SEILER: In order to get around State v. Spotts, I assume what you're saying is the forfeiture act and petition comes under the sentencing hearing, which is part of the criminal... [LB706]

COREY O'BRIEN: Senator Seiler, the way that the bill is written, when it uses the word "forfeiture," I don't perceive this as being forfeiture in the same way as State v. Spotts

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talks about. This is not... [LB706]

SENATOR SEILER: Where does it define that? [LB706]

COREY O'BRIEN: Where does... [LB706]

SENATOR SEILER: Because in Spotts they just said it had to...if you had a separate hearing and a separate action it would be different. [LB706]

COREY O'BRIEN: Right. [LB706]

SENATOR SEILER: It would be double jeopardy. [LB706]

COREY O'BRIEN: Right. [LB706]

SENATOR SEILER: But in this case, you're saying it's part of the sentencing as I read this. That's not right? [LB706]

COREY O'BRIEN: No, sir. [LB706]

SENATOR SEILER: Tell me how it is then. [LB706]

COREY O'BRIEN: Let me explain what the purpose is. There are a number of a provisions in existing criminal law that says that various items shall be subject to forfeiture to the state because they are deemed contraband. For instance, if somebody goes out and catches fish without a license, the statute says those fish that are caught are subject to forfeiture. They're not contraband, per se, but the Legislature has determined it to be contraband because it was obtained illegally. What we're talking about here is no different than somebody that counterfeits money and they counterfeit money using printers and dies and casts. And basically what we are saying is that the computers, the photographic equipment, they are contraband. And we have created a mechanism by which we realize that computers are different than fish, okay? Computers are different from fish in the aspect of they hold the photos from the 1983 vacation that that person took and they may want to get that back. It may contain their tax returns. And so we want to give them the ability to get that back. But at the same time, we don't want to give back the tools of the trade that they used to commit the offenses that they're doing. So essentially, it's not forfeiture in the sense of we talk about in the drug field where we're taking away cars and we're taking away the money that they earned as a result of their trafficking opportunities. It's providing for a sensible opportunity for them to get back information without us giving back the tools of the trade or the pornography that they have manufactured. Does that answer your question? [LB706]

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SENATOR SEILER: No, because I'm talking about the procedure and you're saying you've got a different definition of forfeiture as looking at the evidence and I'd hate to hang my hat on that before the Supreme Court. [LB706]

COREY O'BRIEN: Well, here... [LB706]

SENATOR SEILER: But that's up to you because you're the one going to be up there arguing. [LB706]

COREY O'BRIEN: Well, but with respect to the number of crimes they talked about for...like, for instance, the fish. Or, for instance, if you obtain... [LB706]

SENATOR SEILER: I don't see the... [LB706]

COREY O'BRIEN: If you obtain a hand...state law requires that if you obtain a handgun and you lied on your handgun form, it says any gun that that person is applying for shall be forfeited to the state. There is no procedure like is in this bill. There is no procedure. It's just taken away. It is, per se, contraband. [LB706]

SENATOR SEILER: And has that been appealed to the Supreme Court? No. [LB706]

COREY O'BRIEN: I don't know if it has or not. [LB706]

SENATOR SEILER: It hasn't. [LB706]

COREY O'BRIEN: Okay. But here... [LB706]

SENATOR SEILER: So you don't know if it's a... [LB706]

COREY O'BRIEN: But I'm saying that... [LB706]

SENATOR SEILER: ...the Spotts case or not. [LB706]

COREY O'BRIEN: What I'm saying is that this is not designed to enrich law enforcement or the state the same way that the forfeitures are done for gambling, the same way they're done for proceeds for drugs. This is contraband that we're trying to provide a mechanism by which somebody can argue, like a business owner that the person was manufacturing child pornography onto, they can come back and get their property back. [LB706]

SENATOR SEILER: But we don't know what that is because of the fact the county attorney fills out what that property is going to be taken. [LB706]

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COREY O'BRIEN: Right. [LB706]

SENATOR SEILER: We don't know what that is. It's not defined in here. The property is not defined. It just says the county attorney, prior to the hearing, will fill out a forfeiture list. [LB706]

COREY O'BRIEN: Right, and then... [LB706]

SENATOR SEILER: But he could be any...how about the car that he drove around in? How about the house that he lives in? I guess this is personal property. Excuse me. [LB706]

COREY O'BRIEN: That's...it's personal property. [LB706]

SENATOR SEILER: That's not a good definition...all the furniture in the house. [LB706]

COREY O'BRIEN: But then he also... [LB706]

SENATOR SEILER: We don't know that answer by looking at this bill unless the information we've been given is inconsistent with the statute, and I'm willing to... [LB706]

COREY O'BRIEN: What the bill says is that then the prosecutor has to prove at the hearing that it was used or intended to be used to facilitate the crime and it... [LB706]

SENATOR SEILER: And if it's in the house where the pictures were taken, that's...is wide enough for your definition? [LB706]

COREY O'BRIEN: To be...no. [LB706]

SENATOR SEILER: Okay. [LB706]

COREY O'BRIEN: No, it...I mean, what we're trying to talk about here is computers, photographic equipment, hard drives, thumb drives, CDs, things of that nature that contain the child pornography. And one of the big problems we've run into is this, is that, you know, a lot of times we're ordered to give back these computers and when we give the computers back we have limited options. Our options are to wipe the hard drive which, according to the forensic scientists that I work with say, it is absolutely impossible to completely wipe away all evidence of the child pornography that was on there when we give it back to them. So essentially, we're handing them back a computer that has that on there. And so that's why this is a difficult area, and what we're trying to do is make sure that we don't give back child pornography and we don't give back the evidence of the crime. [LB706]

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SENATOR SEILER: And I have no problem with what you're describing right now. [LB706]

COREY O'BRIEN: That's exactly what this is intended to do. And when we use the word "forfeiture," it's completely different. [LB706]

SENATOR SEILER: But this bill doesn't limit it to that. That's my point. So if you change...have Senator Harr change that to limiting those properties to what you just described, I don't have any problem with it. But when you leave it wide open to put anything you want down there for personal property, I have a problem. Thank you. [LB706]

COREY O'BRIEN: And it's personal... [LB706]

SENATOR SEILER: Thank you. [LB706]

COREY O'BRIEN: I'm sorry. Thank you. I'm sorry. [LB706]

SENATOR ASHFORD: Thanks, Corey. Senator Chambers. [LB706]

COREY O'BRIEN: I'm sorry. [LB706]

SENATOR CHAMBERS: What does "facilitate" mean? [LB706]

COREY O'BRIEN: Facilitate means to assist with the commission of the crime, aid and abet, and... [LB706]

SENATOR CHAMBERS: So then if a computer was sitting on a table, the table would have facilitated that crime. Anything connected or used in connection with the computer would help facilitate the use of the computer, wouldn't it? [LB706]

COREY O'BRIEN: I certainly wouldn't want to make that argument before a district court at that hearing. [LB706]

SENATOR CHAMBERS: But you could, couldn't you? [LB706]

COREY O'BRIEN: Arguably, yes. [LB706]

SENATOR CHAMBERS: If a computer is plugged into an electrical outlet, that wouldn't give you a basis to go after the house because it's not personal property, is that correct? [LB706]

COREY O'BRIEN: That's correct. That's a fixture. [LB706]

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SENATOR CHAMBERS: When you talked about fish being confiscated and you acknowledged it's different and Senator Seiler was looking at the process, when you take a fish without a license, you are obtaining something illegally in the first instance, so it's something to which you never had legal title. If you lie on an application to get a firearm, you are obtaining something illegally and you never had good title to it in the first place under the law. So when you get the computer, it's not the same thing at all, not even as an example, not even as a metaphor, because you can get the computer legally and have good title to it. So the examples don't really hold water, in my opinion, but I'm not going to go through all of these different things. Were you here when a senator named Mike Flood was here? [LB706]

COREY O'BRIEN: I was. [LB706]

SENATOR CHAMBERS: Well, were you here when a senator named Mike Friend was here? [LB706]

COREY O'BRIEN: I was. [LB706]

SENATOR CHAMBERS: He had brought a bill on behalf of the Attorney General where they were first starting out on this and they, I think, used the federal law or some other law as an example. They listed out all of these particular devices and I told Mike Friend, that's a waste of time, a waste of space, and I rewrote it, simplified it. I didn't even like what it was doing. But not only did Mike Friend, but the Attorney General's Office said, this is much better than what we had. So I have experience with bad bills coming from the Attorney General's Office. It's not just because it's the Attorney General. Did you draft this bill? [LB706]

COREY O'BRIEN: Personally, no. [LB706]

SENATOR CHAMBERS: Where did it come from? [LB706]

COREY O'BRIEN: It was drafted by my office and I am responsible for everything that's in there. [LB706]

SENATOR CHAMBERS: No, I'm not making...I want to find out...because somebody in your office did...whoever drafted it come up with these ideas or was it based on some other law from some other state? Or you don't know? [LB706]

COREY O'BRIEN: A lot of the time... [LB706]

SENATOR CHAMBERS: I don't want to push you into an area where you're not sure. [LB706]

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COREY O'BRIEN: It's my understanding that the provisions on forfeiture came from the federal law and what's in current federal law. The other portions of the statute, I think one other provision was taken out of federal law. A lot of times we do always rely upon other state laws for guidance, but we do think them through too. And the bill that you talk about in terms in the electronic communication devices, I did draft that and I...there's always a better way to word things. And I'm not saying I'm... [LB706]

SENATOR CHAMBERS: The only reason I mentioned that... [LB706]

COREY O'BRIEN: ...I'm a genius in the way I do things. I'm not. I make plenty of mistakes and I appreciate all the help I can get, Senator. [LB706]

SENATOR CHAMBERS: The only reason I mentioned that is so it would be clear that I'm not just saying I'm accustomed to that coming from the Attorney General's Office. I've had experience, but not just with the Attorney General's Office. That's who happens to be here today. But other sources of bills, I've brought that issue up. Now when parts of a statute are taken from different jurisdictions, different areas, it becomes like a patchwork quilt and not everything may necessarily fit together. The parts may look like they fit. But if you start the mechanism and it begins to turn, then they grind, they might even be self-destructive. So when these kind of bills come, we have to be very careful in how we analyze them. Some of the parts might contradict and conflict with what's existing in the law. And when things like forfeiture are mentioned, I was allowing Senator Seiler to run with that ball, but those things always concern me too. As policymakers, when we are very careful in scrutinizing bills that can be utilized, should they become law, in a way that is inappropriate, our scrutinizing it doesn't indicate that we support the underlying crime or conduct that the bill is designed to address. We're saying that the way it's being addressed is not appropriate. Prosecutors like their work made as easy for them as possible, like most people do. Prosecutors like to punish and sometimes, when they can't create new crimes, they want to stiffen the punishment. When there was a rush by people at the congressional level to show that they're strong on crime by supporting the death penalty, they ran out of legitimate circumstances. So then they started saying, and it's something like these niche offenses created in Nebraska, that if a poultry inspector is in the process of inspecting poultry and he or she is killed, the death penalty. And that's how they proliferated the number of offenses that would carry a death penalty. And that was real. In England, they had over 100 offenses that would carry the death penalty: if you broke out a window, and that could even be a child; if you destroy people's turnips; if you killed a deer at a certain stage of development. They had death penalty for everything. And others who have studied England's law said they have the most humane, progressive laws, but the most barbaric punishments on the face of the earth. So I'm saying that to put in context my approach to these kind of things. And I'm through with that on the bill. But I want to ask you this question: When is the Attorney General going to establish or seek the establishment or

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leave in the establishment of a multidisciplinary task force--federal, state, county, and local--to find the source of guns in Omaha? Has he discussed that with you? [LB706]

COREY O'BRIEN: He has not. [LB706]

SENATOR CHAMBERS: I know. He hasn't discussed it with anybody. Nobody does, but I'm going to bring it up again and again. And you're not the Attorney General so I'm not holding you responsible. [LB706]

COREY O'BRIEN: Can I say one thing about that though? [LB706]

SENATOR CHAMBERS: Sure. [LB706]

COREY O'BRIEN: In 2009...this is a concern of every prosecutor, Senator Chambers, with respect to the source of guns. In 2009, I did draft, and it was passed into law, some legislation that was specifically designed to help with guns being put in the hands of children. We created several statutes with respect to drive-by shootings. [LB706]

SENATOR CHAMBERS: What did it...because I wasn't here then. What did it call...what was to be done by law enforcement to track down the source of the guns? [LB706]

SENATOR ASHFORD: I think what you're talking about, Corey, is... [LB706]

COREY O'BRIEN: LB63 was the bill. [LB706]

SENATOR ASHFORD: You enhanced penalties but I think that... [LB706]

COREY O'BRIEN: We've created some statutes too. [LB706]

SENATOR ASHFORD: It enhanced penalties but I...primarily. But I think the point, I think, that...if I might, Senator Chambers? [LB706]

SENATOR CHAMBERS: Yes. [LB706]

SENATOR ASHFORD: It's...again, this isn't...not reflecting upon you, but I do think it is something that, for the 16 years I've been here, has been just such a frustrating thing. We can enhance the penalties after the fact. So if there's a drive-by shooting, there is a penalty. Very difficult to find the perpetrator; but if you do, that's fine and then it may make a difference. I don't know how many bills I've brought that say, you know, let's get tougher at guns shows to make sure that we have a...if a gun...if guns are being...they're...it...you know, there's no permit, there's no background check as there would be at a licensed gun store. You know, I remember one time we had a...there was a gun show at the...at a University of Nebraska...yeah, it was at UNL property and, you

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know, anybody could...this was years and years ago and anybody could walk in, there was no background check, there was no extra check. Well, obviously, anybody that wants to purchase a handgun or any kind of a gun could go into any gun show. They're not monitored. I mean, that would make a significant difference right there. That's one thing. You know, mental health checks, I mean, is there...are there things that we should be doing in that area? You know, I think LB63 was, again, enforcement. It was an enforcement provision. Somebody commits a crime, procures a firearm for a minor, there is a...we...it's a good thing. [LB706]

COREY O'BRIEN: And that's a substantial penalty we increased. [LB706]

SENATOR ASHFORD: That's a good thing, but the guns get out into the community en masse. You know, they're coming from somewhere. These kids, if they're going into gun stores and buying these guns at Guns Unlimited, for example, that seems very, very unlikely. I mean they're getting them from other sources. So, I mean, I don't know... [LB706]

COREY O'BRIEN: I'm not saying it was the end-all, be-all bill. [LB706]

SENATOR ASHFORD: No, no, and I'm not...but what... [LB706]

COREY O'BRIEN: But, I mean, it was something that we are trying to do. [LB706]

SENATOR ASHFORD: But what I think Senator Chambers...you know, and I... [LB706]

SENATOR CHAMBERS: Let me say what I'm getting at. [LB706]

SENATOR ASHFORD: No. Let me continue just for the...I think, I mean, from my point of view, having...then I'll turn it back to Senator Chambers...it is...we have to have a balanced approach and there has not been that by this state: any sort of real, holistic initiative to...or raising it to a high, high priority of getting guns off the street. And I know it's a difficult chore. Sorry, Senator Chambers. [LB706]

SENATOR CHAMBERS: No, here's what I'm getting at. When young people can get these guns, they know where they can get them from. But the police can't figure it out; the FBI can't figure it out; the Bureau of Firearms, Tobacco, and Explosives can't figure it out; Homeland Security can't figure it out; Douglas County Sheriff can't; the superintendent of the State Patrol; the chief of police; none of them can figure it out. Have they ever thought about deputizing these young people and having them do the work that the police refuse to do? When the white woman was killed by Nikko Jenkins, they tracked down the source of the ammunition. They can do that. And I've been saying for years that I don't want to see anybody hurt, I don't want to see anybody killed. But the killings continue with guns. And until it starts happening to white people, nobody

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is going to be concerned. Marty Conboy used to come down here and testify. He was a city prosecutor. He agreed with me that if the gun crimes that occur in my community occurred in west Omaha, they'd go to the source of the guns and they would get the guns and the ones supplying them. I've seen where the federal government put together stings for various purposes and I've seen where, in Lincoln not too long ago, they found some guy, and I don't know if he was alone, with several hundred guns. But it was concluded that those guns would probably be used in the white community, so they cleaned those up. But if the guns are just used in our community by us, against us, nobody has an interest. So when they bring this, it is beginning to mean less and less to me. It doesn't even register with me. I also saw where a multidisciplinary task force was put together. The Governor's wife was there. There were people from the State Patrol, sheriff's department, the police, and the FBI, and they said, these keg parties are very destructive and we're not going after the parties, we're going after the suppliers, we're going after those adults who are making this alcohol available to these children. Somebody is making guns available to the children in my community. I don't see the number of white kids dying from overdoses of alcohol that I see being killed in my community. So white people are concerned about alcohol among young white people. I see where the Attorney General is going to come in here with some kind of law about this K2, whatever it is, and I saw where sheriffs are upset about it, police chiefs are excited about it. But it's killing white kids, so they're excited. In Connecticut, and just like other cities in this country, when heroin was viewed as a drug used by white...black people, nobody cared. But now heroin is a lot cheaper than Oxycodone and these other drugs that white kids were using. And now white kids are using heroin and it's such an epidemic problem in Connecticut that the governor came out and said, we cannot arrest our way out of this problem and we have to do something about it, because it involves white kids. When it was viewed as a black people's drug, nobody cared. Five dollars for the heroin where it would cost \$30 to get Oxycodone, and all these white kids want is whatever they get in the way of a lift, a high, a buzz from the drugs. So I see it all the time, everywhere. I'm not going to be sympathetic anymore when you all bring this to me. It's going to be a quid pro quo. If you want the "quid pro quo," you give me some "quid." And I'm not getting that. And the Attorney General, ever since I've been in this Legislature, whether it was Don Stenberg on through, they always bring these so-called anticrime bills and they're good for campaigning. But I'm watching the destruction of my community. And contrary to what white people say, I'm not going to go out here and arrest people who have got guns. I'm not going to track down the gun dealers. You don't even make white people track down those selling liquor. But I'm supposed to do it all. I'm supposed to do what the police can't do. And I tell the people in my community: Don't let them put you in the frame of mind where you have to enforce the law. First of all, you don't have any arrest authority. It's not for you to go out here and do this. They take care of it in the white community. I get tired of driving through my community and seeing these makeshift memorials, flowers, stuffed animals, all of these prayer vigils that are going to do nothing, people crying for another death. White people will even come to those and they'll all cry. But when they talk about the community putting forth

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an effort to end the violence, nobody, not Chief Schmaderer, not Mayor Stothert, not city councilman Ben Gray, who is black, not county commissioner Chris Rodgers, who is black, will ever mention the source of the guns, none of that is going to do anything. So that's what people are going to hear from me whenever they bring something like this. And it doesn't mean anything to me anyway. If you're talking about kids being murdered, that's something. But if it's just pornography, so what? Why should it mean...should child pornography mean something to me in terms of my being disturbed enough about it to try to do something to, if not eradicate it, because you can't completely eradicate any of these things, where I try to mitigate the damage or reduce the amount of it that's available or stop the production of it to the extent I can, should I be interested in doing that? Do you think--and I'm asking for your opinion--do you think I should be interested in that? [LB706]

COREY O'BRIEN: Yes, because it leads to child murder in a lot of cases, and exploitation. [LB706]

SENATOR CHAMBERS: Do you think there are some crimes that are worse than others? [LB706]

COREY O'BRIEN: Do I think there's crimes that are worse than others? [LB706]

SENATOR CHAMBERS: Some that are worse than others? [LB706]

COREY O'BRIEN: Absolutely. [LB706]

SENATOR CHAMBERS: Do you think something that kills a child is worse than something that exploits a child in a movie? [LB706]

COREY O'BRIEN: There is nothing worse than any crime committed against a child, especially murder. [LB706]

SENATOR CHAMBERS: You know why white people got upset about this little black girl? Because she was very attractive, she was very pretty, and the picture they put on television was...when I was studying English literature, they had an expression, "everyman," meaning this story could apply to anybody at any time in history, any place in the world. She was "every little girl," very pretty, beautiful smile. In an editorial they even dropped her first name and substituted "angel." But there were other little black children who looked like what white people would consider the typical black child--no pictures, no angel, no community gatherings, no tugging at the heartstrings of the entire community. I live in that community. I see the reaction of this society. The closer we come to looking like white people and what they consider to be attractive, the more white people identify with that child. This final statement: Just like the more an animal resembles a human being, the more sympathy people feel toward that animal, the more

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affection they can feel for that animal, the more they can attribute to that animal human sentiments. They don't feel the same way about an iguana that they feel about a little sorrowful-eyed puppy dog. They don't feel the same way about a bird that they feel about a little kitten because nothing about the bird makes the human being think about a human being. But when you see any baby mammal with the head that's out of proportion to the size of the body, wide-open eyes, an appearance of innocence, even if it's a baby cougar, people can identify with that. I took a lot of time to say this because I want it in the record. I have to establish that I care about what happens to the children in my community. But nobody else does. You don't care. But it's never been presented to you this way. When I present it like this, everybody says, oh, yes, I care. But you all have had the tools ever since you've been a member of the Attorney General's staff and the idea never occurred to you to seek to set up this task force that will go after the source of the guns. And I'm not blaming you personally. But you're here, you represent the Attorney General's Office, so you're my sounding board. And it's reaching the point now where I cannot constrain myself anymore. I don't mean I'm going to jump across the table, but where I can let these opportunities pass without saying something. And I'm not going to say these things to ordinary citizens when they come to testify. But Senator Harr is an elected official with the wherewithal to do something, you are a member of the Attorney General's Office, the chief law enforcement officer in the state, so you all are the ones that I ought to present it to and that's what I've done. [LB706]

SENATOR ASHFORD: Thanks, Corey. [LB706]

COREY O'BRIEN: Thank you. [LB706]

SENATOR ASHFORD: Any other...David. [LB706]

DAVID PARTSCH: Good afternoon again, Chairman Ashford, Senators. Again, my name is David Partsch, Otoe County Attorney. I am the legislative chair of the legislative committee of the County Attorneys Association and I am here to express the association's support of LB706, in particular want to emphasize that this is a bill that contains many important provisions. One of those, as Mr. O'Brien mentioned, would address those individuals in library situations and things like that where they are viewing these images. These are...and it's not just pornography. These are children that are captured in images of being sexually abused. And so it is, obviously, an important issue and it does need to be addressed. The additional provision in there regarding live sex acts in front of children is also important to me. I've had a case, for example, with an individual masturbating, a grown male masturbating in front of a young child. And that's a situation that slips through the cracks of some of the current laws and that does get addressed particularly by this bill, LB706. I'm pleased to hear that there will be further discussion about the forfeiture provision. I think it's more of a situation...and actually appreciate Senator Chambers' comments regarding guns because it brings to mind the current section in Nebraska law on the evidence of guns is that if they are used in the

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commission of a crime they are to be destroyed. And that's what we're asking for with the computers as well is, if they are used in the commission of these offenses, that they ought to be destroyed as well. We take them to these experts at State Patrol and ask them to wipe it clean. It takes time and, again, it's never fully cleaned, so yet we're giving it back to them. And I'd appreciate the Legislature acting on that matter as well. Any questions? [LB706]

SENATOR ASHFORD: Thanks, David. [LB706]

DAVID PARTSCH: Thank you. [LB706]

SENATOR ASHFORD: Any other proponents? Any opponents? [LB706]

DENISE FROST: (Exhibit 3) Good afternoon again, members of the committee. My name is Denise Frost and I'm here today on behalf of the Nebraska Association of Criminal Defense Attorneys. The page is circulating a letter which I had provided earlier this week to Senator Harr regarding some specific concerns that we have with this legislation. There is a real problem with this in that it casts a net far too wide with respect to what can be seized and from whom it can be seized. For example, if somebody borrows my laptop with my permission and they decide to use it for purposes of accessing or even manufacturing child pornography, they may be subject to a criminal prosecution. But what about my laptop? This bill has some real problems--Senator Seiler, I think you identified some of them earlier with the proponents of the bill--but not the least of the problems is, as I note in my letter to Senator Harr, this is a...set ups a forfeiture scheme that literally cannot work under Nebraska law. It says if someone's using my laptop and I want to petition the court to get it back, it tells me I may go into the criminal case. Well, no, I can't go into the criminal case. The law is clear: I have no standing in a criminal case. It's the state and the defendant. So this gives me no remedy whatsoever to challenge the seizure of my property. That is a problem and this bill doesn't address it. I suggested to Senator Harr that if this body is inclined to pursue some type of a forfeiture provision with relation to electronic devices or whatnot, you do have a model which the Legislature has previously enacted regarding drug crimes. It starts at 28-431 in the statutes. If you're inclined to go with any type of a forfeiture, this side is narrowing that definition. There has already been a process enacted but this is unconstitutional as it's set forth in the bill. I also suggested that, again, looking at this in terms of this bill is phrased as the criminal process, if evidence is going to be preserved--any evidence--under this bill, I think it would be imperative to preserve everything that was offered into evidence, not just admitted but offered, because many appeals do center on the Rules of Evidence. And that's in Section 3, subsection (5), of the bill. Finally, I made a specific note, Section 3, subsection (7) of this bill declares that there is not going to be a double jeopardy problem with this. With all due respect to you as a body, you can't do that. That's been tried and failed. I gave you a citation to Jaksha v. State. The Legislature attempted to do

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a similar thing when it was with property taxes many years ago. This body can't dictate what is double jeopardy. That's an exclusively judicial function. There is a case from about 1999, State v. Franco, that gave everybody the road map on don't put the forfeiture first if that's your inclination; do your criminal conviction first and then you don't have a double jeopardy problem. But this suggests putting the cart before the horse and that, I would venture to say, would be struck down instantly as unconstitutional. Thank you. I have nothing further. [LB706]

SENATOR ASHFORD: Thank you, Denise. I don't see any questions. Thanks. [LB706]

DENISE FROST: Thank you. [LB706]

SENATOR ASHFORD: Any other opponents? Neutral? Senator Harr... [LB706]

SENATOR HARR: I'll waive. [LB706]

SENATOR ASHFORD: ...waives. Okay. Senator Lautenbaugh is next with LB822. [LB706]

SENATOR LAUTENBAUGH: Thank you for the thumbs-up. [LB822]

SENATOR ASHFORD: Well, you know, it's...we don't...it's these little insider signals we have here in the Legislature. (Laugh) [LB822]

SENATOR LAUTENBAUGH: (Exhibit 4) Thank you, Mr. Chairman, members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I represent District 18. I'm here to introduce LB822. LB822 was brought to me by the County Attorneys Association specifically to address a circumstance that, while I'm sure it's arisen elsewhere, specifically arose in Douglas County. LB822 clarifies statutes regarding sexual assault of a minor by providing a clearer standard. And there is an amendment which has been passed out which takes the place of the bill introduced, and rightfully so, because I think the bill as introduced made the problem worse rather than better. The circumstance we're trying to address is as follows, and this specifically arose regarding some prosecutions from a middle school in Omaha where a teacher had been behaving, to say "inappropriately" doesn't really cover it but that's the language I'll choose to use, with students there. There was a 14-year-old girl who began to have a...at this point, simply, a relationship of a nonsexual nature with a teacher in his 30s. By the time it became...had any sort of physicality to it, she had turned 15 and this...under existing law, for whatever reason, there is a gap for 15-year-olds. If there had been physicality when she was 14, it would be covered, it would be a crime. If it's consensual and she is 15, it is not covered. So the amendment clarifies that by saying--let me get the language right--if you're under 16 years of age, that clarifies that 15-year-olds would be covered and that elements of the crime would have existed for

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this girl even at 15 years old, not...so the crime would have been charged at that point. And I hate to do a hand-off like this but, as you're probably divining from my introduction here, every time I try to explain this I seem to cloud and fog the problem more than I illuminate the problem. There is a testifier here from the Douglas County Attorney's Office who came down to my office and explained this to me very clearly at 1:15 and I'm still not articulating it terribly well, even though I understood it in my own mind just a scant hour ago. But I think I've given you the basics of it. I would be happy to try to answer any questions you may have about this. But simply put, I think what we discovered in that case was that because of the unfortunate fact that the physicality took place when the victim was 15 years old, the perpetrator could not have been charged as he would have been if she was 14 or 16. And that was manifestly unjust in this circumstance and this is meant to remedy that inexplicable gap. I think the rest of our statutes seem to key on 16. For some reason, this one keys on 14. This would remedy that. I'd be happy to try to answer any questions any of you may have. And I will say up front, I am waiving closing because I have to be elsewhere. So if you do have any questions that you want me to try to answer, I'll be happy to do them now and you will not have a chance later, so. [LB822]

SENATOR ASHFORD: Any questions of Senator Lautenbaugh? Fairly clear, Senator Lautenbaugh. [LB822]

SENATOR LAUTENBAUGH: You're kidding. (Laughter) Others will do better. [LB822]

SENATOR ASHFORD: Well, thank you. Douglas County Attorney? [LB822]

SENATOR LAUTENBAUGH: For one, yes. [LB822]

MOLLY KEANE: Good afternoon, Mr. Chairman and members of the committee. My name is Molly Keane, K-e-a-n-e, and I'm a deputy county attorney in the Douglas County Attorney's Office. In that office, I supervise a team of attorneys who prosecutes offenses perpetrated against child victims. Particularly, sexual offenses really are the majority of the cases that I handle and have handled for a few years now for the Douglas County Attorney's Office. As part of that position, I was on a team with Don Kleine and Brenda Beadle, who prosecuted the case that Senator Lautenbaugh just recently discussed. I am here in support of LB822 based on my experience with that case, as well as other investigations I've dealt with through the years. What LB822 does generally is expand the age class of victims of a third- or second-degree sexual assault on a child, making it when the defendant is over 19, the child is under 16, and subjects that child to sexual contact, that would be a Class IIIA felony according to LB822. As the law stands now, the class covered is 14 and under, which basically leaves out 15-year-olds. The case that Senator Lautenbaugh discussed was a great example of how LB822 could really help protect a child victim who was not protected in that situation. In that case, a 35-year-old teacher at an Omaha middle school began a

relationship with a 14-year-old girl, began tutoring her and through that relationship established at first an emotional relationship with that girl, leading her to believe that he loved her, that she loved him, that he was going to leave his wife for her. It was really heartbreaking to listen to this child express the depth of her emotion for this teacher who took advantage of her and how it, unfortunately for us at that point, it was only after she was 15 that sexual contact began. That sexual contact, as described by her, involved touching, both over and under the clothes, of the intimate parts, which would be covered by this statute. At that time, there was no sexual assault statute that we could charge that teacher with as a result of his actual contact with the child. We had to look for other ways to charge him. We did find another way to charge him merely because there was an extensive amount of phone contact between these two individuals and, therefore, we were able to use the sexual assault using a communication device statute to prosecute him successfully. So one of the reasons that we do support this bill is because in my experience working with children who are victims of sexual abuse, and particularly children of this age, adolescents, they are, as the state and other states have already deemed, really not mature enough to be able to give consent to these types of relationships with people who are so significantly older than they. So based on that immaturity, as well as an attempt to make this particular statute, second- and third-degree sexual assault on a child, consistent with the remainder of the Nebraska statutes that address sexually based offenses against children, I think that LB822 is important. Every other sexually based offense in Nebraska that deals with sexual offenses against children use the age 16 or 18 or aggravated at...with a 12-year-old. That includes: first-degree sexual assault generally, defendant over 19, child under 16; first-degree sexual assault on a child where the defendant is over 19 and the child is under 12; or the defendant is over 25 and the child is under 16. And not only those first-degree sexual assault statutes, but sexual assault using an electronic communication device... [LB822]

SENATOR ASHFORD: Molly, let's do this. Let's see, I didn't tell you about the red light ejection thing. [LB822]

MOLLY KEANE: And I saw it. I'm sorry. [LB822]

SENATOR ASHFORD: I should have...you know, we never do the ejection, but let me see if there are any questions. I think we get the point. [LB822]

MOLLY KEANE: Okay. [LB822]

SENATOR ASHFORD: I wonder if...how...is this just an inadvertent...do you have any thoughts on...you have not had occasion...this was the first occasion? Because I know you do a lot of these cases, was this the first occasion you had where this came up? [LB822]

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MOLLY KEANE: It's not the first occasion; it's probably the most significant occasion in which it arose. There are other examples I can think of where similar circumstances have happened. [LB822]

SENATOR ASHFORD: When they're 15 and over 19? [LB822]

MOLLY KEANE: When they're 15, giving...having a consensual relationship with someone over 19 that could have been charged if this statute were in place. [LB822]

SENATOR ASHFORD: Okay. It seems like a...yes, Senator Seiler. [LB822]

SENATOR SEILER: It appears to be that we have an amendment already, AM1664, where your testimony would also apply to that, right, just for the record? [LB822]

MOLLY KEANE: Right, and specifically to that. [LB822]

SENATOR SEILER: Okay. [LB822]

MOLLY KEANE: It doesn't apply to it as originally presented. [LB822]

SENATOR SEILER: Just for the record. Thank you. [LB822]

MOLLY KEANE: Yes. Thank you. [LB822]

SENATOR ASHFORD: Thank you, Molly. Thanks for your testimony. Any other proponents? Opponents? Neutral? Thank you. Senator Lautenbaugh...Senator Lautenbaugh is gone. Senator Lathrop is up. Good luck. [LB822]

SENATOR LATHROP: (Exhibits 5-10) Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator representing District 12. I'm here today to introduce LB752. LB752 would add to the list of those in a special class emergency responders. They would join state correctional employees, employees of the Department of Health and Human Services, and healthcare providers who have been provided special protections in our assault statutes. The last addition to this class of individuals was the healthcare providers. That was my bill a few years ago. That arose out of what became maybe, perhaps, not an epidemic but a growing incidence of assaults upon nurses, emergency room people, those who are vulnerable as they attempt to provide care to individuals who are then the assailants. This bill would add emergency responders to that class. And while I appreciate that Senator Chambers may have some concern about setting out individuals in a special class, I think there's good reason for these and I'd like to talk about why I've brought the bill. We've had two occasions--and you'll have some testimony after I've...I'm done introducing the bill--two occasions in the last year where

paramedics or first responders have been assaulted as they've attempted to provide care to or come to the aid of the very people they're supposed to be caring for. One was Brock Borhart from Omaha who was shot by a person he was providing care to. There was also an individual out in, I think, North Platte who was stabbed by a person he was providing care to. And it illustrates two things. One is that the first responders or these EMTs and the paramedics, when they provide care, like the healthcare providers, they come rushing towards them to provide care and they are in a vulnerable situation. They stand in close proximity; they do not expect to be assaulted; there's nothing about the circumstances which would suggest that it's...that they're about to engage in an assault; they're not trained to deal with an assault; and they are particularly vulnerable because they have drawn themselves in close proximity as they've tried to provide aid. I think that the inclusion of first responders to this list of those that are in a protected class makes sense. I think it's appropriate and necessary and the rationale behind it in each of these classes is with the Health and Human Services worker or the correction worker or the nurse or the firefighter or the paramedic, if you will, those people are in a particularly vulnerable circumstance. You might be in a house if you're a social worker. The firefighter or the paramedic is someone who comes to the aid of another, doesn't have the training to respond to an assault, wouldn't expect it, and they are drawn in close proximity by virtue of the emergency call. I do have a letter from the firefighter in Omaha who was the subject of an assault, a shooting, and I'll let you read that. I've passed a copy of it around and I think you will find that that's a...that the effect something like this has on one who provides care and assistance to people in our community is profound and you can tell that, I think, from the letter. And I would encourage your support of and movement of LB752 to the floor for General File debate. I'd be happy to answer any questions. [LB752]

SENATOR ASHFORD: Thank you, Steve. Senator Chambers. [LB752]

SENATOR CHAMBERS: Senator Lathrop, suppose an ordinary citizen came upon an accident and was performing the identical aid that one of these first responders or others would provide and was assaulted. That person, that activity, would not be sufficient to cloak that individual with the protection that these niche beneficiaries have. Isn't that true? [LB752]

SENATOR LATHROP: That's true. The classification is based upon employment and not necessarily the activity. The rationale might be related to the activity, but the classification is based on employment. [LB752]

SENATOR CHAMBERS: Which means that if you do it because you have a job, you're put a notch above ordinary citizens when it comes to the kind of protection the state thinks you should have--that's a comment. This does not actually prevent any of these assaults from occurring, will it? [LB752]

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SENATOR LATHROP: I'd like to think so, I'd like to think, as I look back on the healthcare providers that we covered. That included some signage in the emergency room, if you'll remember. [LB752]

SENATOR CHAMBERS: Bingo. Hold it. That's...I think I may have supported that and I think you brought the bill and you said they wanted to be able to put a sign notifying people that if you harm... [LB752]

SENATOR LATHROP: Actually, you came down, you were not a...you were not elected at the time, but we had a conversation. [LB752]

SENATOR CHAMBERS: Okay. [LB752]

SENATOR LATHROP: And we went from a mandatory sentence to upgrading the level of offense instead of having a mandatory... [LB752]

SENATOR CHAMBERS: But the purpose was to be able to let them put a sign there saying that if you harm these individuals, you're giving notice to people of the fact that this is going to carry whatever the penalty is. That argument was persuasive to me when you gave it. Nobody is going to know any of these things that are happening. These people who come to us just want to feel that somebody is going to be punished more harshly. This is not going to stop anybody from doing whatever they want to do. [LB752]

SENATOR LATHROP: I...you know, the signage in the emergency rooms and in the hospitals, I see them when I go into hospitals now, hopefully that's helpful. But I also think that there's an opportunity for people who might engage in these kind of assaults to say, wait a minute, this is not the person to assault because I'm looking at a more harsh penalty on account of that. I do think some of that stuff moves around on the street and that people learn that if a social worker is in your house you don't assault them because, by gosh, they're going to treat you more harshly than a simple assault. And the same, I think, would be true with the paramedics. I'd like to think so. [LB752]

SENATOR CHAMBERS: I think our life experiences cause us to see things differently. Now I don't live in the street. But if you would stop people in the street and say, if you slapped a woman or you slapped a firefighter, which one would you get the heaviest punishment for and what would that punishment be, some might say if you slapped the firefighter because they're going to take care of him because he's like a cop; others would say, well, whenever you do something to a woman it's worse so it's going to be the woman. So it depends on the way the person looks at life. But I don't believe this actually is going to do anything. But here is what I want to get to: When people become aware that these kind of things are done, it could encourage other people, as I suggested when talking to another of the...an earlier witness. A floor walker in a store

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may say, well, we want to be protected because of there might be somebody who doesn't like the store and they're going to get the first one near to them so you ought to make it a felony if they do something to me. I just don't believe in these kinds of things. And I'm not going to go through this with everybody who testifies, but I want to say it to you so it's clear that I don't support these kind of special considerations being given to people because of the job that they hold. [LB752]

SENATOR LATHROP: I appreciate that and I know that that's your position and I guess we see this one differently. [LB752]

SENATOR CHAMBERS: So I didn't support the signage bill? [LB752]

SENATOR LATHROP: You weren't around. [LB752]

SENATOR CHAMBERS: That makes me (inaudible). [LB752]

SENATOR LATHROP: We did talk in the hall about the punishment though and you persuaded me to do the punishment differently. [LB752]

SENATOR CHAMBERS: Okay. Thank you. That's all I have. [LB752]

SENATOR MCGILL: Any other questions for Senator Lathrop? Nope. Thank you very much, and we'll take the first proponent. [LB752]

DAVID ENGLER: Good afternoon. I'm Dave Engler. I'm the president of the Nebraska Professional Fire Fighters. And statistics indicate that there are 750,000 assaults on firefighters, paramedics, and EMTs annually in the United States of America. According to the Department of Labor, 52 percent of the EMTs operating in the field have been assaulted. Fire and EMS personnel make excellent targets. Unlike the average citizen, we're called into unknown situations, we have an obligation or a duty to respond, and our personnel do not carry any type of weapons. The 911 service originally intended for handling only life-threatening emergencies has undergone a paradigm shift and is now more of a government-funded home healthcare and troubleshooting system. As a result, public opinion of firefighters and EMS personnel is shifting. Such workers used to be seen as heroic responders and they would rarely be attacked at incidents because their neutrality was respected. However, fire and EMS crews are increasingly being considered fair game for attack because they are viewed as just another extension of the government. This problem is becoming significant enough that just this month FEMA has recommended bulletproof vests for firefighters and EMS personnel. A research project conducted across the United States on this subject showed that, aside from physical injuries, firefighters were found to be experiencing emotional trauma following the attacks which could have an impact on patient care at future events. Interestingly, their research found no correlation between staffing or between the threats of violence

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and the population or staffing of the responders that responded. So this can happen anywhere in Nebraska. We have seen extreme cases in which a gunman in Missouri assassinated a firefighter as he was preparing to extinguish a car fire. We saw in Olathe, Kansas, where a man lit his home on fire and waited to shoot the firefighters as they responded to put it out. In Nebraska, we've had emergency responders held at knife point, one shot in the back of an ambulance while providing care. We have numerous, numerous assaults on firefighters and threats of assaults. It's our hope that by giving firefighters and EMS personnel the same protection as a law enforcement officer or as emergency room personnel, we can reduce these incidents. Again, our responders are...if the average citizen comes upon a situation like this, they don't have the issues of patient abandonment. They have an obligation to respond and they have an obligation to stay with the patient. So I think that is a distinction from the thing...from the situation you addressed earlier, Senator Chambers. But with that, I'll answer any questions. [LB752]

SENATOR MCGILL: All right. Senator Chambers. [LB752]

SENATOR CHAMBERS: I'm posing this as a question although I know what your answer will be. Not everybody in the room may know. Was there a recent incident when a person was taken into an ambulance and she had a gun and, however it happened, the gun discharged? Fortunately, nobody was killed, but somebody may have been grazed with...but at any rate, a person did wind up in the ambulance with a gun. [LB752]

DAVID ENGLER: Yes. [LB752]

SENATOR CHAMBERS: I saw where that woman was sentenced to a relatively stiff term of years for that. Are you aware that she was searched by an Omaha Police officer before she got into the ambulance? [LB752]

DAVID ENGLER: I am not aware of all the specifics of that incident. [LB752]

SENATOR CHAMBERS: You hadn't read or hear that, that she had been searched before she got into the ambulance? [LB752]

DAVID ENGLER: No. [LB752]

SENATOR CHAMBERS: Okay. Then I won't pursue it with you. Thank you. [LB752]

DAVID ENGLER: Okay. [LB752]

SENATOR MCGILL: Other questions? I don't see any. Thank you, Dave. [LB752]

DAVID ENGLER: Okay. Thank you. [LB752]

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SENATOR MCGILL: Next proponent. [LB752]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB752. I want to relate the only incident that I can factually come and share with you, 2007, and this came from the ranks of a volunteer firefighter, a volunteer firefighter in June of 2007 in Ashland. That volunteer firefighter was among four volunteer firefighters going to a house, an acreage, if you will, as I understand the news accounts, that there was a fire that was occurring on that person's land. The four volunteer firefighters went upon the property to extinguish the fire that was underway. One of those volunteer firefighters was shot. And these are people, volunteer firefighters, volunteer rescue personnel, contrary to what I might do and perhaps others in the room as running away from danger, a fire, a catastrophe, an emergency, these volunteer firefighters and voluntary emergency personnel, they run toward danger. That's what they do. We place them in harm's way because of the roles that they've chosen to participate in, running towards danger, and with LB752 we believe that would be a way to address the issue when these people are placed in harm's way. For those reasons, I'd ask you to consider advancing LB752 to General File. Thank you. [LB752]

SENATOR MCGILL: Thanks, Jerry. Any questions? No. Thank you very much. [LB752]

JERRY STILMOCK: Thank you, Senators. [LB752]

SENATOR MCGILL: Other proponents. [LB752]

ROBERT HALLSTROM: Senator McGill, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Pharmacists Association in support of LB752. Our support is based on the fact that we have spoken with Senator Lathrop and asked for his consideration, as well as the committee's consideration, of an amendment to add pharmacists to the list of healthcare professionals and a pharmacy to the list of locations in which assault on a healthcare provider can lead to enhanced penalties. Under the current law, assault of a healthcare provider in a hospital or health clinic is covered. But pharmacists are only covered in those settings, and we would like to expand that coverage to their work in the community pharmacy setting, which by the case would involve a notice that could be posted at the community pharmacy to serve notice that pharmacists are among those that are protected under the laws. So we will be submitting an amendment to the committee for consideration and have been working with Senator Lathrop's staff in that regard. Be happy to address any questions. [LB752]

SENATOR MCGILL: Questions? Senator Chambers. [LB752]

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SENATOR CHAMBERS: What other client...do you have...have you ever represented the podiatrists? [LB752]

ROBERT HALLSTROM: No, Senator. [LB752]

SENATOR CHAMBERS: Or the chiropractors? [LB752]

ROBERT HALLSTROM: No, Senator. [LB752]

SENATOR CHAMBERS: Okay. Are you familiar with the incident that I was describing to the young man who came? I shouldn't say that, but everybody is young compared to me. I don't think he's not mature and so forth, but I say that to all of the youngsters. I'm older than most people in the world. I'm not the oldest person in the world, but I'm older than most people in the world. Had you read about that incident that I mentioned where a person wound up in an ambulance--it was in Omaha--with a pistol and the gun discharged and somebody was injured in the ambulance? [LB752]

ROBERT HALLSTROM: I had read the news article but I don't know any more specifics. [LB752]

SENATOR CHAMBERS: No detail, okay, so I won't pursue that with you. Why should pharmacists be given...first of all, what kind of protection are they given under this bill that anybody else would not have? [LB752]

ROBERT HALLSTROM: Well, there are some enhanced penalties with regard to assault of a healthcare professional that apply. We had suggested that we were interested when the legislation first came about a couple years ago, when Senator Lathrop... [LB752]

SENATOR CHAMBERS: The main ingredient is an enhanced penalty. [LB752]

ROBERT HALLSTROM: Yes. [LB752]

SENATOR CHAMBERS: You represent bankers, don't you? [LB752]

ROBERT HALLSTROM: Yes, I do. [LB752]

SENATOR CHAMBERS: Do you think bankers should have this consideration? Banks are robbed, aren't they? [LB752]

ROBERT HALLSTROM: They are. [LB752]

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SENATOR CHAMBERS: And anybody in a bank could be in danger of being harmed. [LB752]

ROBERT HALLSTROM: Okay. I'm not here for that purpose today. [LB752]

SENATOR CHAMBERS: But if they asked you to come, you would be asking that bankers be protected in this same way, too, wouldn't you, if they asked you to? [LB752]

ROBERT HALLSTROM: If that was an issue on their radar screen, that could potentially be the case. [LB752]

SENATOR CHAMBERS: You're a lobbyist, aren't you? [LB752]

ROBERT HALLSTROM: That's correct. [LB752]

SENATOR CHAMBERS: Are you aware that there are people who don't like lobbyists? (Laughter) [LB752]

ROBERT HALLSTROM: I would suspect that's probably the case. [LB752]

SENATOR CHAMBERS: Do you think lobbyists should be covered in this way? [LB752]

ROBERT HALLSTROM: I'm not requesting that today, Senator. [LB752]

SENATOR CHAMBERS: I didn't understand you. [LB752]

ROBERT HALLSTROM: I'm not requesting that today, Senator. [LB752]

SENATOR CHAMBERS: Now I'm...for...you're a lobbyist. Do you think you ought to be given this special protection? [LB752]

ROBERT HALLSTROM: No, sir. [LB752]

SENATOR CHAMBERS: Or are you a person...you're a human being of lesser merit and lesser worth because you're a lobbyist. Is that your... [LB752]

ROBERT HALLSTROM: I would not agree with that, Senator, but I'm... [LB752]

SENATOR CHAMBERS: Are you equal in value to anybody? [LB752]

ROBERT HALLSTROM: I would like to think so. [LB752]

SENATOR CHAMBERS: Are you equal in value to a pharmacist? [LB752]

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ROBERT HALLSTROM: I would like to think so. [LB752]

SENATOR CHAMBERS: Then why should a pharmacist get this protection if you not you? [LB752]

ROBERT HALLSTROM: Pharmacists are, through their employment, are placed in a scenario where they have prescription drugs and controlled substances that are subject to abuse and are probably more likely to encounter robberies and the potential for assault in the course of their employment. [LB752]

SENATOR CHAMBERS: Now, Mr. Hallstrom, almost daily I get threats, I get called racial slurs. Should I get...be given this protection because I hold a unique status? In this statehouse even, do you think I should be entitled to this kind of protection? [LB752]

ROBERT HALLSTROM: I'm probably not in a position to opine on that. [LB752]

SENATOR CHAMBERS: So you don't think I'm entitled to it? I'm talking about your affirmative position, not your obfuscation or your evasiveness. You don't think I'm entitled to that kind of protection. Being honest, you don't think I am, or Senator McGill either, or Senator Lathrop who is trying to help you today. You don't think we're entitled to this kind of protection, do you? [LB752]

ROBERT HALLSTROM: Senator, the bill was brought in the context of healthcare professionals and emergency responders and that's... [LB752]

SENATOR CHAMBERS: Well, let me ask you this: Why don't we have a general law that protects all human beings and will accord them equal status? Which is what the law does now until they started putting these niche, n-i-c-h-e, groups and individuals into it. Should we put a limit on the number of proliferations we will allow and say no more than 100 exceptions to the general rule will be made or no more than 10 or 20? Or we should not in advance set a limitation but leave it to those who can persuade us to give them this special protection? Which approach do you think we ought to take? [LB752]

ROBERT HALLSTROM: The latter. [LB752]

SENATOR CHAMBERS: Leave it to each to see who can persuade us to do it? [LB752]

ROBERT HALLSTROM: Correct. [LB752]

SENATOR CHAMBERS: What do you think your chances are of persuading us to put pharmacists into this category? Or you'd rather not speculate? [LB752]

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ROBERT HALLSTROM: I'd rather not speculate. [LB752]

SENATOR CHAMBERS: You're a wise man, that's why you keep your job. That's all I have. Thank you, Mr. Hallstrom. [LB752]

ROBERT HALLSTROM: Thank you. [LB752]

SENATOR ASHFORD: Thanks, Bob. Any other proponents? [LB752]

JIM MASTELLER: Good afternoon, Mr. Chairman, members of the committee. My name is Jim Masteller. I'm a deputy Douglas County attorney and I'm here to speak in support of LB752. Specifically, I wanted to advise the committee that it is the position of Don Kleine, the Douglas County Attorney, and the Douglas County Attorney's Office that we are in support of this bill. I'm sure I'm going to be catching some questions from Senator Chambers because I'm very familiar with the case to which you're referring because I was the prosecutor on the case. That was a case involving Justine Dubois. In that case, she did hide a firearm on her person and in order to...in her attempt to avoid arrest, she faked a seizure, resulting in the fire department responding. The paramedics quickly determined, in their opinion, that they thought she was faking the seizure but, since she insisted, they were going to take her to the hospital. They took her into the ambulance, she pulled out the weapon, discharged it twice, once grazing the fire department personnel, one actually striking herself, before she eventually was taken back into custody. This case pointed out a gap in the statutory structure. If you think about this through, if Ms. Dubois had struck a police officer at the time of her arrest, that would have been a felony. If she had then faked a seizure and gone in an ambulance and struck one of the firefighter or EMTs, that would have been a misdemeanor. But then once she made it to the hospital, if she then struck a registered nurse, that would have been a felony. That doesn't make...that doesn't seem a very consistent statutory scheme. Also, based on cases that I have had, it's not unusual for the EMTs, once they transport someone to the hospital, to continue to assist that patient, along with the healthcare professionals. So similarly, if someone were to then punch a nurse and punch an EMT at the same time, the assault on the nurse would be a felony under the old statute and would have been a misdemeanor on the EMT. For those reasons, to rule out the inconsistency and to make it a more consistent statute, we would support that. And I'm happy to answer any questions anyone has. [LB752]

SENATOR ASHFORD: Senator Chambers. [LB752]

SENATOR CHAMBERS: My first one: For the sake of the transcribers, would you mind stating and spelling your name? [LB752]

JIM MASTELLER: Sure. Sorry. It's Jim Masteller, spelled M-a-s-t-e-l-l-e-r. [LB752]

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SENATOR CHAMBERS: Thank you. That person that you described had been searched by an Omaha Police officer. Isn't that true? [LB752]

JIM MASTELLER: True. [LB752]

SENATOR CHAMBERS: Nothing was done to that police officer for not finding this pistol on this woman, was it? [LB752]

JIM MASTELLER: If there was, it would have had to have been done internally through the police department, but certainly didn't rise to any type of criminal charge that our office would have been involved with. [LB752]

SENATOR CHAMBERS: So this could be something which would have been prevented if the officer had done her job properly, isn't that true? [LB752]

JIM MASTELLER: If the officer had found the firearm then, yes, it never would have been used in that assault. [LB752]

SENATOR CHAMBERS: Have you watched television crime programs where an officer is taking somebody into custody? [LB752]

JIM MASTELLER: Yes. [LB752]

SENATOR CHAMBERS: Have you seen a search that will be made of that individual? [LB752]

JIM MASTELLER: Yes. [LB752]

SENATOR CHAMBERS: So without me being trained specially in the way that a police officer is, I'd know how to search somebody for a firearm. So I didn't read where anybody...the firefighters were not upset with her, the people in the ambulance were not upset with her, and that's where the problem was. A person hired, trained, and paid to do a job failed in every respect and nobody said anything about it except me. And here's what I'm getting at: There are too many instances where whenever something happens, first thing people say is, well, let's make it a crime and put a harsh punishment. But they don't look at those who are in the favored positions, like police officers and these others, who do wrongful things. They want it to be a felony if I pop a firefighter but it's not a felony if he pops me. If I pop a cop, then it's a felony; if he pops me, it's nothing. That's what the public looks at. I'm a part of the public; I'm a part of the hated public. So when they bring all these kind of bills, I understand what they want. Anybody wants more protection if they can get it. But my job as a lawmaker is to see all human beings as having a basic and fundamental dignity. And when the law that we put in place undertakes to recognize that dignity and punish anything that harms it, we should not

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make distinctions and elevate some people above others. Do you think a lawyer who commits an assault should be treated less harshly than a nonlawyer who did exactly the same thing, because of his status as a lawyer? [LB752]

JIM MASTELLER: No. [LB752]

SENATOR CHAMBERS: Do you think a judge should be given special consideration because he or she is a judge and handles very important matters? [LB752]

JIM MASTELLER: In terms of if they were to commit an assault? [LB752]

SENATOR CHAMBERS: Say it again? [LB752]

JIM MASTELLER: If they were to commit an assault? [LB752]

SENATOR CHAMBERS: Yes. [LB752]

JIM MASTELLER: No, I would ask that they be treated the same. [LB752]

SENATOR CHAMBERS: Then why should we make these distinctions? And here's what I'm getting at: When I was in the army I knew I wasn't...well, I was pretty sure I wasn't going overseas because I had gone in by way of a reserve group. And when I was on active duty, they couldn't send me overseas unless they brought the whole unit, and that wasn't going to happen. So I never went overseas; I never shot at anybody; nobody ever shot at me. And I just wanted to get in and get out so I could go to school. But that doesn't mean the possibility was not there that I could be, contrary to what I calculated, sent overseas. And I couldn't say, you're wrong to send me overseas, because I didn't think that was going to happen to me. When you get into a certain set of circumstances and you place yourself there voluntarily, you assume certain risks. You as a prosecutor, I'm sure, may be aware of certain situations where prosecutors have been shot, I mean killed, in courtrooms even. Should we give you that...this special protection in Nebraska? [LB752]

JIM MASTELLER: Well, I'm not asking for it. [LB752]

SENATOR CHAMBERS: No, that's not what I asked you. Your Honor, the witness is not responsive to the question. (Laughter) Do you think that...forget you, yourself, so it won't be personalized. Do you think prosecutors, that county attorneys all over this state should be given this kind of protection? [LB752]

JIM MASTELLER: I would...I'm trying not to be too legalistic, but I'd want to see if this was a situation that's happening recurrently or if this is a one-time deal. So if I were seeing that, for example, the firefighters, if there were multiple incidents of firefighters

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getting struck, then it seems that's a problem that needs to be addressed. If we just have a one-time occasion of a prosecutor getting injured and it's not a recurring problem, then perhaps not give that special protection to prosecutors. [LB752]

SENATOR CHAMBERS: Then if black people are killed at a greater rate than white people, anybody who kills a black person should be subjected to a harsher punishment following that logic. Isn't that true? The number of times this befalls innocent people who are a member of a certain identifiable group or class, shouldn't those who harm people like me be punished more harshly? But instead, they're punished less severely. [LB752]

JIM MASTELLER: And we do have the hate crime statute that says if you do commit a crime against someone based on the color of their skin, that does increase the penalty. [LB752]

SENATOR CHAMBERS: No, well, that's not answering what I'm saying because all they have to do is say, well, I didn't do it because of the color of his skin. But you know and I know that in this society there have been studies that have established it, that people who commit crimes against black people, whether the perpetrator is black or nonblack, the penalty is not as harsh. And I'm not arguing for harsher penalties. I'm just saying we see the difference in the way the law is applied. But you're white. These people are basically white. Not to say there are no nonwhite first responders and so forth, but the vast majority are white. These are classes of white people. You as a prosecutor deal with more criminals than any of these groups do. That's your...that's how you make your living. And if you don't handle murder cases and homicide cases, your colleagues do handle cases of people who have shot other people, who have killed other people, who are members of gangs and, in some cases, have gotten their buddies to do things to people by way of retaliation. So you're in danger, county attorneys. While you're about it and you're here, why don't you ask us to include the county attorneys? [LB752]

JIM MASTELLER: I don't know that we've ever demonstrated that it's an actual problem for prosecutors. If it became a problem, I'd probably be the first one up here asking for it. [LB752]

SENATOR CHAMBERS: As I said in another context, a lawyer with an interest is a slippery fish. So you need a net which is strong and a fine mesh. My net was not strong; it was not a fine mesh. You're slippery and you escaped. (Laughter) [LB752]

JIM MASTELLER: Thank you. No further questions, I hope. (Laughter) [LB752]

SENATOR ASHFORD: Okay. Anybody else like to talk about this bill, for the bill? Anybody opposed? [LB752]

MARTIN BILEK: (Exhibit 11) Good afternoon, Senators. My name is Marty Bilek,

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B-i-l-e-k. I'm here representing Mayor Jean Stothert. I'm her chief of staff. I'm also a 30-year...38-year veteran law enforcement officer from the sheriff's office in Douglas County, and I'll speak about this a little bit from that perspective maybe. The reason I'm a proponent of this is because Judiciary Committees in the past have debated this issue, probably felt that there are certain people in our society that need to be protected in a little bit different way, and basically I'm talking about people that practice in the criminal justice field. Assuming that they exercised great wisdom when they decided to pass that bill through their Judiciary Committee, it makes great sense to me to just simply add firefighters to that. I know a lot of this debate that I've been hearing today sort of centers around whether or not certain people should be deemed more important than others. I wouldn't be up here if I thought that was the case. For me, it's simply a case of people that respond to 911 calls are exposed to greater danger of assault than people that aren't so, therefore, I think they should be afforded greater protections. It's been decided that that would be afforded to law enforcement and corrections officers, probation officers; firefighters seemed to fit right in. I'm a proponent of this bill. I've seen too many incidents that have occurred in Douglas County where firefighters... [LB752]

SENATOR ASHFORD: Oh, Marty, you're for the bill? [LB752]

MARTIN BILEK: I'm for the bill, yes. [LB752]

SENATOR ASHFORD: Oh, okay. [LB752]

MARTIN BILEK: I'm a proponent. [LB752]

SENATOR ASHFORD: Proponent. [LB752]

MARTIN BILEK: Yes. [LB752]

SENATOR ASHFORD: All right. Good. I think I may have mistakenly asked for opponents and you came up and... [LB752]

MARTIN BILEK: And I apologize. I was little slow getting up here. [LB752]

SENATOR ASHFORD: No, I apologize for being unclear about that. But Marty is for the bill. (Laugh) [LB752]

MARTIN BILEK: I'm a proponent, and that's important. Please don't make that mistake. (Laughter) Anyway,... [LB752]

SENATOR ASHFORD: That would make news. I just wanted to avoid the news. [LB752]

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MARTIN BILEK: No, please, please. Anyway, being a law enforcement officer in Omaha, over the years I've seen firefighters and police officers respond to 911 calls. Over the years, it's almost become...they've become somewhat interchangeable. Sometimes they're the first person to arrive as first responders. They need protections. They talk about needing to acquire bulletproof vests. That's for a reason. They are at risk of assault if...now is this going to eliminate the risk of assault to public safety officials in Omaha or other protected officials? No, it's not. Is it going to give somebody pause, maybe, to say, hey, these people are in uniform, they're here to protect us and maybe I'd better not assault these folks because I do a run a greater risk? Now granted, Senator Chambers, they're not going to know what that risk is. But they're going to know that these people are protected differently. It might give them pause. I would hope that it would. I can also tell you that if you are a person that's going to assault a firefighter, if you're going to assault a police officer, you're probably a little bit more brazen criminal than others and maybe you deserve a little bit stiffer penalty. But anyway, that's why I'm here today. I'm a proponent of this and I'd be glad to answer any questions you might have. [LB752]

SENATOR ASHFORD: Senator Chambers has a question. [LB752]

SENATOR CHAMBERS: There was a waiver given so that you can carry a concealed weapon in the courthouse...I meant the...in City Hall, isn't that true? [LB752]

MARTIN BILEK: That's true. [LB752]

SENATOR CHAMBERS: And that's because you're going to...you're there to protect the mayor. Isn't that true? [LB752]

MARTIN BILEK: That's...partially, yes. I'm her chief of staff but I do serve that function periodically. [LB752]

SENATOR CHAMBERS: Do you believe that you need a concealed weapon to carry out the duties that your job entails? [LB752]

MARTIN BILEK: I believe that the more people in the courthouse, in the Hall of Justice, in the Civic Center, retired cops or active-duty police officers that are in that facility, carrying weapons, and are able to provide some level of interdiction, the safer the building is, and that would include me. [LB752]

SENATOR CHAMBERS: And let's say that I'm a person who is deranged and I'm going to come there. Then I should assume that every cop or person looking like he or she is a part of security, I'd better bump them off right away so I'll have a chance. Do you think it's better for people to think that everybody is armed? [LB752]

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MARTIN BILEK: You know what I think is better, if everybody doesn't know for sure who is armed and who is not so they just decide that I'll play it on the safe side and choose to assault no one. [LB752]

SENATOR CHAMBERS: So then you shoot everybody right away. [LB752]

MARTIN BILEK: Well, if you're talking about mass-casualty incidents and a deranged person, that's always a risk and I don't...that's always going to be there. It's unfortunate part of our society, happens more than it ever used to. [LB752]

SENATOR CHAMBERS: If you had to discharge your firearm in that building, are there hard floors or hard surfaces which might cause a bullet to ricochet? [LB752]

MARTIN BILEK: Absolutely. There's marble in the Hall of Justice. [LB752]

SENATOR CHAMBERS: So you might shoot at me, miss me, and a bullet ricochet and hit Senator Lathrop back there. He's laughing. He (inaudible)... [LB752]

MARTIN BILEK: No. Senator Chambers, I'm going to answer your question because it's not like that hasn't been discussed before, and it's been discussed by the folks who protect the Hall of Justice. There's metal detectors so you have that level of protection, so I'd like to think there would never be a weapon inside that facility anyway. But if there was to be one, then as a law enforcement officer, highly trained, I'd like to think that I'd be able to determine that, yes, matter of fact, law enforcement actually selects a different type of ammunition that won't ricochet off the marble walls because they work security in the courthouse, they know that's an issue, they deal with it. But if it there's somebody in the courthouse firing a gun, if there's an active shooter, they're killing people, and if I have to take a risk to eliminate that threat and possibly hit a marble wall and ricochet, I've got to do it because I know one thing for sure: If I don't stop him, he's going to continue to kill until he runs out of ammunition. [LB752]

SENATOR CHAMBERS: And a guy who is authorized to have a gun may have had a problem with his or her spouse and come to work very angry. And you may stop that person but that person who is authorized to carry a gun can kill somebody. And you may be unaware, but there have been instances where police officers went into their precincts and shot other police officers. Maybe you've never heard of such a thing. I read articles of every kind that I can, magazines and newspapers, and I'm not making these kind of things up. You don't know who is going to be deranged. I know you're aware of the officers who have committed and been charged with and, even some cases, convicted of domestic assault where they assaulted a spouse or a significant other. So the mere fact that somebody has a particular job doesn't mean he or she is not subject to the same fits of anger and reacting on the basis of that anger as anybody who is not employed like that--doctors, lawyers, judges. And if you don't think so, I'll go

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through my files of articles and I'll send you some articles on each one of those categories. [LB752]

MARTIN BILEK: Senator, everything you say on this topic is absolutely true. Our law enforcement officers, do they suffer from mental health problems? Yes, sir, they suffer from stress at home, yes. Could they at some point snap and pose a risk and use their firearms illegally? Absolutely. It happens everywhere. It happens in all parts of the country. It's very unfortunate. So, yes, that's true. [LB752]

SENATOR CHAMBERS: Now I'm going to bring... [LB752]

MARTIN BILEK: Now...go ahead. [LB752]

SENATOR CHAMBERS: I'm going to bring us back to this. And by the way, I read your letter, so I saw where it says, I am speaking in support. So even though Senator Ashford asked for opponents and you came up, I was surprised. But when the letter came, I looked at it and I saw you said, I'm going to support this, so I didn't even raise the issue because your letter makes it clear you're in support of the bill. So that's why I didn't raise the issue of your being an opponent. But if I hadn't read your letter, I would have said, this amazes me that you're opposed to this bill. But what about this police officer who searched the woman? Because I see and I didn't know that Mayor Stothert was going to mention that incident in her letter. What about the police officer who conducted a search incompetently? [LB752]

MARTIN BILEK: The...whatever happened in that ambulance that night, the details I couldn't recite for you today because I haven't read the reports. But I do read the paper and I do talk to law enforcement in Omaha so I have an idea. And what I can tell you is, first of all, if the officer made a mistake, didn't follow proper policy and procedure, they need to be disciplined, end of story. I'd say that about any violation. However, that... [LB752]

SENATOR CHAMBERS: Then that ends the story for me too. [LB752]

MARTIN BILEK: However, that doesn't change the fact that the woman in the ambulance produced the weapon and tried to...did assault the fireman with it, regardless of how she got the weapon. Now it's important to know, or it doesn't change the fact, that she used the weapon to assault the fireman, and that's one of the issues we're trying to address here today. And I also don't know that I'd want to second-guess the wisdom of maybe the jury or the judge who heard all the facts and then sentenced the woman accordingly. [LB752]

SENATOR CHAMBERS: I'm not saying anything about the woman who did the shooting, the sentence or anything else. I'm saying that one of these people you

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described as highly trained--highly trained, that's your description of the law enforcement persons--could not do what is the most basic...one of the most basic and fundamental activities of a police officer, and that's to conduct a search. And had that search been properly conducted, we wouldn't even be talking about this incident because it never would have occurred. They might have got her for a concealed weapon, if it was stolen, if she was an unauthorized person, all those charges would have been filed. There would have been no shooting. A cop is the cause. To me, the force that sets a train of actions in motion is the cause. That police officer is the cause of what happened, just like if I know a man is insane and I give him a gun. [LB752]

MARTIN BILEK: Senator, I've got to disagree with that very respectfully. The cause of that was the woman somehow got her hands on the gun and chose to assault that fireman with it. Whether or not the...now if your question is, would it have been prevented if the police officer would have found the gun, yes. [LB752]

SENATOR CHAMBERS: That's the "alibi-ing" I always hear. [LB752]

MARTIN BILEK: But if you would have been transported by that ambulance and had a gun on you, you wouldn't have produced it whether the firearms...whether the cop would have found it or not. [LB752]

SENATOR CHAMBERS: That's the "alibi-ing" I always hear whenever something is done by one of these cops or a firefighter or anybody else. They alibi and say, that's not what we're talking about. But it's exactly what I'm talking about because people in your position always get the benefit of huge doubts. And I believe in saying these things to the people who are here. And you can excuse that police officer if you want to. But people on the street, and especially in my community, look at the fact that nobody is talking about the one who could have prevented it. [LB752]

MARTIN BILEK: It's two separate issues, Senator, I'm afraid. I'm not excusing that police officer. My...initially when I commented on this, I told you that the policy procedures were violated, that police officer needs to be held accountable. I would always say that. Now...and that's the end of that part, that topic. Now we have to go to where the gun came...where did the gun come from? Did this woman commit an assault? It was upon a firefighter, should it be prosecuted with greater penalties than an assault that didn't involve a firefighter? [LB752]

SENATOR CHAMBERS: She got 11 years. [LB752]

MARTIN BILEK: That's true. And you're right, that is a stiff penalty. I was rather surprised at that. I don't know if she deserved it though. [LB752]

SENATOR CHAMBERS: And these people said that wasn't enough. They said the 11

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years was not enough of a sentence when a cop did wrong. And we don't know that anything was done to the cop. And you know why we'll never find out? They'll say it was a personnel action. [LB752]

MARTIN BILEK: And we also don't know what the criminal...at least I don't know what the criminal history is of that woman. She might have a terrible criminal history and the judge decided it warranted the penalty. [LB752]

SENATOR CHAMBERS: It wouldn't matter what her history was. [LB752]

MARTIN BILEK: It would to the judge. [LB752]

SENATOR CHAMBERS: If a search was conducted and the officer claims that she searched her and she missed the gun, maybe she didn't search at all and told a lie and claimed to have searched her when she really didn't. But once again, people are not going to inquire too deeply into that and I will because that kind of thing could happen again. These things are glossed over. It's why people say cops get away with murder, firefighters get away with murder, lawyers do, judges do, all of them do, because when they do something wrong, everybody is going to give them an alibi. And instead of holding them to the higher standard which they should be held to, there is a lower standard when they do something wrong. And I'm not going to put you through any more, but you are able to handle this because of your years of law enforcement. I bet you wish that during all those years this is the worst thing you ever had to confront, somebody disagreeing with you on something like this. Your life would have been like a bed of roses, wouldn't it, if this was the hardest thing you ever had to confront? Or is this the hardest thing you ever had to confront? (Laughter) That's all that I have. [LB752]

MARTIN BILEK: Let me just say, law enforcement was a great career for me. I wouldn't do it any differently if I had it to do over again. Thank you, Senator. [LB752]

SENATOR ASHFORD: Thanks, Marty. Thanks. That's good. [LB752]

MARTIN BILEK: Okay. [LB752]

SENATOR ASHFORD: Any other proponents for the bill? How about opponents? Those would be those persons who are against the bill. (Laughter) [LB752]

TOM STRIGENZ: I was a little confused. [LB752]

SENATOR ASHFORD: I try to get it as clear as I can. And I know it's difficult, Senator Chambers, at times, but... [LB752]

TOM STRIGENZ: Good afternoon. Tom Strigenz, S-t-r-i-g-e-n-z, appearing as a

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proponent on this bill on behalf of the Nebraska Criminal Defense Attorneys Association. [LB752]

SENATOR ASHFORD: You mean you're opponent. [LB752]

TOM STRIGENZ: I'm an opponent. Did I say proponent? [LB752]

SENATOR ASHFORD: Yeah. [LB752]

TOM STRIGENZ: Oh, my gosh. Opponent. [LB752]

SENATOR ASHFORD: Poor...all I can say... [LB752]

TOM STRIGENZ: I think...and we need that switched. Opponent. [LB752]

SENATOR ASHFORD: I don't think Oliver has had a tougher day at his job as committee clerk. [LB752]

TOM STRIGENZ: Sorry, sorry. Opponent, basically, you know, with all due respect to firemen who truly, if there is a class that could be protected, you know, they could be one. I mean, they didn't assume the risk as Senator Chambers has said. I mean, they are rushing in, helping people. That being said, you know, we heard the phrase "gap in statutory structure." You know there is a problem. I agreed with, probably, what the witness said. But that's the problem with making classifications. Where do you stop? And we don't...we think this, basically, this whole area is probably flawed. But we're here as an opponent of this specific change. And again, it just makes classifications of individuals, you don't know where to stop. An attorney was just killed in Hastings, you know. I mean, there's just lots of different things and people do enter professions hopefully with eyes wide open. I will tell you, I also think that there's something being missed that I want to bring up that, you know, I think the statutory structure is also flawed because in this statute, you know, it's knowingly, intentionally, and recklessly causing injury as opposed to, like, the bodily fluids statute, 934, just knowingly, intentionally. We think the recklessly portion of this statute is bad because, especially in these types of instances, with the addition of the two types of classifications we're talking about, these people are under stress, they're excitable, they are many times mentally impaired in some way, shape, or form, whether voluntarily or involuntarily. We took away the voluntary intoxication stuff a little...a couple of years ago and, I mean, you know, some of these people are out of their minds and they truly do not know that...and again, the two people who specifically that we're talking about today are really trying to help them in their moment of need. We have seen in our...in the criminal defense side we have seen a high tick of felony charges now where during an arrest, during a...something happened, they're now looking at a felony and it's just a tool that is just...it is flawed. I mean, there is a gap in statutory structure. We recommend a reworking of

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this whole area and just to...you know, we just think that this...you know, again, with all due respect to firemen and EMTs and those people, I mean, they are truly people at the top of the list. But it is just flawed and with that we would strongly encourage you going back to the drawing board on this whole scenario. [LB752]

SENATOR ASHFORD: Thanks, Tom. Yes, Senator Chambers. [LB752]

SENATOR CHAMBERS: You heard where a lobbyist for the pharmacists felt that they should be protected. [LB752]

TOM STRIGENZ: Yes. [LB752]

SENATOR CHAMBERS: There are teachers who have been assaulted, they should be protected, principals, school administrators. And that's the point--you made it--that I'm trying to get across. And I keep using the term "niche" because we carve out here, carve out there, and the ones who get the special protection are the those who have the lobbyists or an influential senator going their bond. But the ordinary person who might be more likely to be attacked for no reason is a throwaway, the jetsam and flotsam of society. But I'm not going to go through all that. I'm just glad that there is somebody else who can see that doing what is being asked here should not be done and opposing this kind of conduct doesn't mean you're endorsing the harming of anybody. It's just not a wise thing to do, in my opinion, so I appreciate the fact that you came. [LB752]

TOM STRIGENZ: I mean, perhaps the policy is of this...the lawmaker is to...what is the penalty for an assault? That's the bottom line, so. [LB752]

SENATOR ASHFORD: Thanks, Tom. [LB752]

TOM STRIGENZ: Thank you. [LB752]

SENATOR ASHFORD: Any other opponents? Neutral? Senator Lathrop, do you...proceed. [LB752]

SENATOR LATHROP: You know, this is my eighth year on this committee and one of the things that I enjoy the most about serving on this particular committee is I don't think that there is a committee in the Legislature that does a better job of asking the questions and making people justify why they're here and what the necessity of a bill is. And so I think it's incumbent on me to make that case and I'm going to close this way. I think there is a reason for the people that we put into this...these...this particular class. You can argue whether we never should have gone down this road at all. But does it make sense to protect these individuals? This statute and these changes protect folks in the correctional office, right, and corrections officers? It corrects...it protects or provides a special protection for people in Health and Human Services. That's the social worker

that goes into a house to go talk to some family about something they need. And they are particularly vulnerable, I think, because they're not at their place of business, they're going into someone else's home where they may have guns or other ways to hurt people. The healthcare specialist, you know, we passed these changes and put healthcare specialists into this class because nurses and emergency room doctors go to a patient. And if you think about it, they're standing over another human being trying to provide them with care. And I don't know how or there's very few professions where you are going to be as vulnerable as a healthcare worker is standing over a patient. I think the firefighter and the paramedic belong in that class, too, and I'll tell you why. My office is at 107th and Pacific and out my window I can see the Regency apartments. They are occupied by a lot of elderly people and so about once a week they'll get a call for the paramedics to show up right outside my window. It's...there is a creek there. But I see them do it all the time. Their fire trucks roll in, the paramedics jump off of there, and they've filled both hands with these little, small suitcases full of stuff to save somebody's life, and they run into the house like this, both hands full with equipment. And they're not in a position to defend themselves and the 911 calls come out and they go into the hot spots. Now not every one of these calls are going into the retirement homes or the apartments of the elderly that I see them go into. But when they jump off that truck or step out of the ambulance to go provide care, they're going in with their hands full and they're going towards the hot spot to help somebody, and they're going to get into close proximity to another person where they can be, unlike me, a lawyer...I'm not likely to be stabbed in a courtroom. It is possible. But these guys get so close in proximity, like the healthcare provider, that that happens. They get in the back of an ambulance that's probably the size of this tabletop and not much bigger than that, and there's nowhere to go. Somebody wants to pull a knife or start assaulting, they're in a particularly vulnerable situation. And I think, colleagues, that's what makes this different. If we are to go down the road, and we have, about placing those who have a particular vulnerability into a special class when it comes to an assault, these guys do a job that places them in the same vulnerability, I think, of any other healthcare provider, and that's why I believe it's appropriate to amend the statute and include this class of public servants in the statute. [LB752]

SENATOR ASHFORD: Go ahead. [LB752]

SENATOR CHAMBERS: Senator Lathrop, the Vatican has been guarded down through the years by Swiss mercenaries. Somebody said that Frenchmen were arguing with Swiss mercenaries about which of the two was worthy of the most consideration. So the question was put to the Frenchmen, how do we determine this and why do you say that? The Frenchmen said, we the French fight for love, you the Swiss fight for money. He said, I guess we fight for what we need the most and have the least of. Now here is the point I'm getting to: When I saw where that building had caved in and the firefighters and the responders were there, I shouldn't say this, but that was a place where there are all kind of chemicals and what I saw as people were talking about the danger to the

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employees, I'm thinking that employees...I didn't want anybody to be hurt. They're not the only ones who could be harmed by inhaling chemicals or smoke, but everybody there. There is a tendency to dehumanize, not that you make them animals, dehumanize firefighters when they're doing their job because this is what they do and somehow they're exempt from the dangers that are facing the people they're going to rescue. But what I was thinking about is if these firefighters had families and their family members would see this on television, they would know that there could be very grave consequences to their family members who were there. So in no way am I disparaging the kind of work that they do or saying that they're not entitled to recognition for it. But that's not what I'm here for and I'm not trying to be facetious. There are awards, there are banquets, there are other ways they have of honoring people who do their job well. Sometimes a man or a woman in the military who has behaved in an extraordinary manner will be rewarded with bits of metal and ribbon. That's it. But society attaches to those symbols a lot of things that go beyond just the bits of metal and the ribbons and it's what they symbolize that will bring honor to the one who wears it. I don't think that when laws are enacted the law itself should say some people are better than others because of the work they've chosen to do. Maybe if they were under compulsion to go into a dangerous situation, it would be different because they don't do this exercising of free choice. But when they choose to take a job where they get more money, they get benefits, and they assume the risks, then however sympathetic I may be to whatever plight they may face, as a lawmaker I'm not prepared to enact a law that says give them consideration that others don't get. I do see a reason why we ought to accord special protection to children, to people who are sick, to the elderly, and those who are truly vulnerable. But these people who you're talking about become vulnerable by voluntarily placing themselves in circumstances which they know are a part of the job. So I cannot support this kind of legislation, but I don't condemn anybody for bringing it. Each of us will view the world on the basis of our background, our experiences, our upbringing, education, and all the rest of it, and mine has been such that in some areas maybe I'm a purist, if I can call it that. If the law and justice are truly blind and will not say that I'm going to be aware of the financial or social status of the person standing before me, then I can look at that person or not see the person at all and deal only with the facts of the situation. Society has not mandated that people be firefighters or police officers, and in many cases they get better compensation, which is why people go to work, than ordinary people get. So for my part...you say we've started down this road and you're right. But the fact that ten steps were made in the wrong direction on the wrong road is no reason to continue in that direction. I think a stop should be made and we should retrace those steps and remove all of these special niche groups. That's my view and obviously I'm not going to prevail. But since we're in a short session, I'll bet I'll prevail on this one. [LB752]

SENATOR LATHROP: Well, the only response, and I don't...and then I'm done, is this isn't intended to single them out and say we really like fire guys and so we're putting them in a special class, they're better people than somebody else. It's about their

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vulnerability when they're doing their job. And, yes, they sign up for it; they sign up for and understand the risk of going into a building that might collapse on them. That, they sign up for, but they don't sign up for--nobody signs up for--getting shot at or having people try to stab them or beat them up. [LB752]

SENATOR CHAMBERS: I agree with all of that. [LB752]

SENATOR LATHROP: And that, I think, is what... [LB752]

SENATOR CHAMBERS: I have to ask you one question. Are you going to support Mr. Hallstrom's amendment and put the pharmacists in it? [LB752]

SENATOR ASHFORD: That's what I was going to ask. [LB752]

SENATOR LATHROP: You know, I'll say this about the pharmacists, and I don't know but I will say this, that two weeks ago I'm watching the paper and there's...I don't know if it was one person or two walks into a pharmacy with a gun and he doesn't go to the cash register to get money. He goes back to the pharmacist wearing the white--by the way, he's in a little bit of a cage back there usually, they're cornered--the guy goes back there with a gun and says, give me your Oxycontin. I don't know. I suppose I'd want to know how common that is and whether I'm persuaded that it would make a difference. [LB752]

SENATOR CHAMBERS: I understand. [LB752]

SENATOR LATHROP: But I think they're in a...I think they can be particularly vulnerable in their circumstance, but I don't know what the incidences are. But it's...but it happened twice, might have been in Council Bluffs or...Council Bluffs in Omaha about a month ago (inaudible)... [LB752]

SENATOR CHAMBERS: And the one in Council Bluffs chased the guy out and gave him worse than what that guy gave him. [LB752]

SENATOR LATHROP: That's true. [LB752]

SENATOR CHAMBERS: In fact, he got him down on the ground and somebody helped him. They held him until the cops came. [LB752]

SENATOR LATHROP: Right. That's the problem with...that's...it may become increasingly more difficult for the pharmacists just by virtue of the fact that we're trying to get ahead of these people that are on the prescription drugs. But I did know that Hallstrom was going to come in and talk about it, but I don't know how common the occurrence is. Thank you. [LB752]

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SENATOR ASHFORD: LB828, Senator Seiler. [LB828]

SENATOR SEILER: I know how to clear out a crowd. (Laughter) [LB828]

SENATOR ASHFORD: Wow. This is going to be a hot one. [LB828]

SENATOR SEILER: Ready? [LB828]

SENATOR ASHFORD: Yes, sir, proceed. [LB828]

SENATOR SEILER: (Exhibit 12) Mr. Chairman, members of the Judiciary Committee, I bring LB828 on behalf of the Nebraska Criminal Defense Association. But I will tell you, I would bring this on behalf of the lawyers, I'd bring it on behalf of the judges, I'd bring it on behalf of anybody that does any work in county court in the criminal side because the district courts have statutory authority to waive and take pleas by waiver. County courts do not. I'm handing out to you a waiver of plea in the county court of Douglas County. And this, when I did criminal work, used to drive me crazy, is that some courts do on their own rules waive...take waivers and pleas of not guilty by written documents, which I have handed out. Others say, no, you've got to appear with your client on all the appearances because Article I, Section 11, of the Nebraska Constitution requires it, and we don't have statutory authority to do this. I would like to tell you how many times it happened to me that I'm sitting in county court with my client, and the judge looks out at me and says, how are you pleading, Mr. Seiler? Not guilty. Then what in the hell are you doing here? You should have signed the waiver and taken up my time. And so I made a list of county courts that allowed it and other counties that didn't and I checked that list before I ever went to them. I think it's high time that we give the county court the authority to receive, like Douglas County does, waivers of pleas and acceptance of pleas of not guilty. Now this doesn't say that you can appear and plead your client guilty, it doesn't. That has to be done in person, as I view the Article I, Section 11. I believe there is a lot of cost savings for the attorneys, for the judges, for the clerks of the court, the county attorneys on having to run over to the court and appear, especially in out west where there's kind of like a traveling judge and even traveling county attorneys that have more than one county. So I think that this bill does allow...cost effective and cost efficient, time efficient for our court systems, and I believe the defendants are well served also. They're not running down there in five seconds and take a day off work to get this done. So I'm asking that the court send to General File the LB828, and I'll open up for questions. [LB828]

SENATOR ASHFORD: Is it all misdemeanors, is that what we're saying here? [LB828]

SENATOR SEILER: Yeah, well, it's all misdemeanors in county court. There are no felonies. [LB828]

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SENATOR ASHFORD: No, but, I mean, that's...it's all misdemeanors would be covered by this. [LB828]

SENATOR SEILER: Right, and traffic tickets, according to Douglas County there. [LB828]

SENATOR ASHFORD: Okay. [LB828]

SENATOR SEILER: Yes, Senator Chambers. [LB828]

SENATOR CHAMBERS: Just for the record, Senator Seiler, no action of any kind has been taken against a judge for accepting a written...a waiver of appearance for a not guilty plea? [LB828]

SENATOR SEILER: I think Douglas County, Hall County does it, but most of the counties do not do it because they say, we don't have statutory authority. [LB828]

SENATOR CHAMBERS: But what I'm getting at, just for the record, it is being done now... [LB828]

SENATOR SEILER: Yes. [LB828]

SENATOR CHAMBERS: ...and there are no problems that have developed in terms of somebody being denied rights because you can only plead not guilty by the waiver. [LB828]

SENATOR SEILER: And the court enters the not guilty plea on your behalf. That is correct. [LB828]

SENATOR CHAMBERS: I just wanted that clearly in the record. [LB828]

SENATOR SEILER: Right. [LB828]

SENATOR CHAMBERS: Thank you. [LB828]

SENATOR SEILER: You're exactly right. [LB828]

SENATOR ASHFORD: Thank you. Thanks, Les. [LB828]

SENATOR SEILER: Okay. Anybody else? [LB828]

SENATOR ASHFORD: Any other...any testimony for the bill? [LB828]

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SENATOR CHAMBERS: I know it's got to be all right now. [LB828]

DENISE FROST: (Exhibit 13) Oh, man, I love this. Thank you. Members of the committee, my name is Denise Frost, D-e-n-i-s-e, Frost like "Jack Frost." It's exciting to be here to ask you to support a bill. I thank Senator Seiler for introducing it. I think, Senator Chambers, to answer your inquiry, to my knowledge, I'm not aware of any case where a defendant or where a conviction has been reversed or anything of that sort based on this form. With the materials that I had sent to all of you earlier this week or perhaps last week, I included a copy of the Douglas County form. As you note on there, the form that they happen to use, I don't know who put that together, but it specifically says on there that when the defendant signs it, he or she is saying, I've been advised of my rights, and the rights are specifically enumerated. Now the bill also provides...Senator Ashford, you had inquired about misdemeanors. Correct, county court is misdemeanors, but many a case begins a felony, begins in county court. This bill would... [LB828]

SENATOR ASHFORD: And I think county court...didn't we give county court felony... [LB828]

DENISE FROST: Class IV felonies. [LB828]

SENATOR ASHFORD: ...Class IV felonies as well at some point, as I recall. [LB828]

DENISE FROST: Yes. Yes, you did. And as Senator Seiler noted, this...you can't enter a guilty plea with a written waiver. [LB828]

SENATOR ASHFORD: Well, what about a IV? Would you be able to enter a... [LB828]

DENISE FROST: I would think that one could enter a IV under this. [LB828]

SENATOR ASHFORD: Okay. [LB828]

DENISE FROST: But again, this is only as to it's a written not guilty plea or a written waiver of arraignment. But no guilty plea, nothing that impinges upon a defendant's rights or liberty can be done in writing. That would have to be done in person. And so Senator Seiler said it all. I couldn't say it better. I'm open to any questions. [LB828]

SENATOR ASHFORD: Senator Lathrop. [LB828]

SENATOR LATHROP: Can just ask this: Do you think that this statute that we would be altering with this bill should reflect that the waiver must include an advisement of the rights? [LB828]

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DENISE FROST: You know, actually, Senator,... [LB828]

SENATOR LATHROP: I mean, I'm thinking of some guy that doesn't know. Maybe he's filing this himself... [LB828]

DENISE FROST: Sure. [LB828]

SENATOR LATHROP: ...or he's got a lawyer that he's paying, maybe can't afford, doesn't know that he's got a right to a public defender. [LB828]

DENISE FROST: I think that's a really good idea. I think that's a really good idea. As I had chatted with Senator Seiler about the bill, I had just proposed, for simplicity, just adding in the fewest words possible. But I think your position is well taken. It would make a clearer, cleaner record so that a defendant would not run a risk of giving up a right he or she did not know about. Similarly, I have heard from some lawyers that judges in their various districts have had concerns about whether signing or allowing a written not guilty plea, would that create problems later on for failures to appear and proving up on those? I think one could easily add into that form something similar to what is handed out, for example, in Washington County. We see it all the time where, it's like on a bond form, I acknowledge that I the defendant have the duty to be present at all hearings. And, you know, you could put in any number of things that were needed, but it just...this is something that just makes a lot of common sense. [LB828]

SENATOR SEILER: Steve, I don't want to adopt a form because I'm dead set against forms being made into statute. [LB828]

SENATOR LATHROP: No, I'm not suggesting that they will be, but this form, it should... [LB828]

SENATOR SEILER: Right, let the judge make that form. [LB828]

SENATOR LATHROP: ...that you brought with you does advise of the rights and it seems to me you're just shutting the door on some no-one-told-me argument. [LB828]

SENATOR SEILER: Right. [LB828]

DENISE FROST: Well, and you raised a good point, Senator, in that, for example, the Douglas County form that I affixed to the materials circulated to you contemplates that a defendant has counsel. There may be...under the statute it's conceivable that a defendant without counsel could elect to enter a written not guilty plea and so, therefore, you know, including on that form, yes, I am aware I have this right, this right, this right, this right, it's probably wise. [LB828]

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SENATOR ASHFORD: Thanks, Denise. [LB828]

DENISE FROST: Thank you. It's exciting. I feel like I'm on the A team now. (Laughter)
[LB828]

SENATOR ASHFORD: Yeah, we don't pick sides. We just listen. Well, some of us do sometimes. Dave. [LB828]

DAVID PARTSCH: Thank you, Senators. I'm pretty excited, too, because I actually get to testify on the same side as the defense bar. I used to be a defense attorney and now...again, David Partsch, P-a-r-t-s-c-h, and appearing as Otoe County Attorney and for the County Attorneys Association. I think this is a commonsense bill Senator Seiler has brought before us to improve efficiencies of the court. I certainly am in support of doing that. I would mention, I think, in addition to the arraignments, it would also allow the written waiver of preliminary hearing in county court so that the...a felony case would be bound over to district court. Currently, in Otoe County we do have written not guilty pleas occasionally, but we always have the defendant appear for a preliminary hearing, which 99 percent of those are just a waiver and then they get the district court date. So I think the key here will be the form, but I think the statute, the bill, is a good bill, and I think the form, as long as it includes those things that will ensure that defendants will be held accountable if they do fail to appear at future hearings, I think that's important, so...but I think that's something that could be addressed in the forms. So I do express our support of the bill. Thank you. [LB828]

SENATOR ASHFORD: Yes, Senator Chambers. [LB828]

SENATOR CHAMBERS: Mr. Partsch, there is an expression: Curiosity killed the cat. But that's not the complete statement. The complete statement is: Curiosity killed the cat's ignorance, curiosity is the first step on the path to knowledge and wisdom. I studied hieroglyphics and, as you know, the Egyptians, some people thought they worshipped cats. But that was the statement and I guess the first guy got only to "curiosity killed the cat" and he might have thought it was a curse, so he took off running. So I went back and finished it. I'm curious why you're here and not Mr. Jon, J-o-n, Edwards is here, why he is not here representing the County Attorneys Association. Is there any reason? [LB828]

DAVID PARTSCH: He is here today. I asked that I be allowed to testify. I am the...
[LB828]

SENATOR CHAMBERS: Where is he? [LB828]

DAVID PARTSCH: He's in the back here. [LB828]

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SENATOR CHAMBERS: Oh, okay. See, I'm aware of things, and when I'm curious I ask questions to kill my ignorance and improve my education, which you just did, so thank you. [LB828]

DAVID PARTSCH: Well, yeah, as legislative chair, I just asked that I be allowed to testify on this today since I was here on other matters as well, so thank you. [LB828]

SENATOR CHAMBERS: That's all I have. [LB828]

DAVID PARTSCH: Very good. [LB828]

SENATOR ASHFORD: Thanks, Dave. Okay. [LB828]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB828. On our legislation committee we have prosecutors and we have criminal defense lawyers and, as you have seen today, both sides of the bar support this, as does the bar association. I'd be happy to answer any questions the committee may have. [LB828]

SENATOR ASHFORD: Senator Chambers, do you have any questions? [LB828]

SENATOR CHAMBERS: Mr. Mueller, in the constellation of issues that can be addressed by a bill, this would be considered a peewee, wouldn't it? [LB828]

BILL MUELLER: I would not refer to Senator Seiler's bill as a peewee. [LB828]

SENATOR CHAMBERS: Well, it is...it's not monumental. [LB828]

BILL MUELLER: I would agree. [LB828]

SENATOR CHAMBERS: And you're here in favor of the bill... [LB828]

BILL MUELLER: Correct. [LB828]

SENATOR CHAMBERS: ...which means that that's not going to put you at cross purposes with the introducer of the bill. [LB828]

BILL MUELLER: That's correct. [LB828]

SENATOR CHAMBERS: Were you here yesterday when a bill was presented? [LB828]

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BILL MUELLER: I was. [LB828]

SENATOR CHAMBERS: And the bar association's position was against that bill. [LB828]

BILL MUELLER: It was. It is. [LB828]

SENATOR CHAMBERS: And the introducer of the bill was myself. [LB828]

BILL MUELLER: Yes. [LB828]

SENATOR CHAMBERS: And a lady opposed that bill. [LB828]

BILL MUELLER: The president elect of the Nebraska State Bar Association opposed that bill on behalf of the bar. [LB828]

SENATOR CHAMBERS: And you were present. [LB828]

BILL MUELLER: I was. We brought in the A team on that bill yesterday. [LB828]

SENATOR CHAMBERS: You knew that she faced a potential, metaphorically speaking, buzz saw by opposing that bill, didn't you, in me? I'd be the buzz saw. You knew that possibility was there. [LB828]

BILL MUELLER: I do know...yes. I...yes, I... [LB828]

SENATOR CHAMBERS: And you're glad that you didn't have to undertake that task, aren't you? Just level with me. [LB828]

SENATOR ASHFORD: Just "yes." (Laughter) Just say yes. [LB828]

BILL MUELLER: My lawyer, Senator Ashford, has advised me to just say yes. [LB828]

SENATOR CHAMBERS: I'm not going to pursue it any further. [LB828]

SENATOR ASHFORD: Thank you, Senator Chambers. [LB828]

SENATOR CHAMBERS: You're welcome. [LB828]

SENATOR ASHFORD: Thanks, Bill. Okay, do we...thank you. [LB828]

BILL MUELLER: Am I finished? Thank you. [LB828]

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SENATOR ASHFORD: Yep. [LB828]

SENATOR SEILER: Senator Chambers, after the last two days, I've never said a "simple" bill. (Laughter) [LB828]

SENATOR ASHFORD: All right. Thank you all. Oh, wait, I'm sorry. Senator Seiler, excuse me. [LB828]

SENATOR SEILER: I'll waive. [LB828]

SENATOR ASHFORD: All right. [LB828]

SENATOR CHAMBERS: What are you doing? [LB828]

SENATOR ASHFORD: We're leaving. We're all done. [LB828]

SENATOR CHAMBERS: You're not going to tell us...go through the ceremony and tell us we're through and we're adjourned? [LB828]

SENATOR ASHFORD: We're all adjourned. Thank you for...thanks for your time. Thanks, public. We're not having any Exec Session, no. [LB828]