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Judiciary Committee  
February 20, 2014

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[LB868 LB890 LB1006 LB1034 LB1105]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 20, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB868, LB890, LB1105, LB1034, and LB1006. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. A little unruly, actually, if you ask...

SENATOR MCGILL: It's very unruly.

SENATOR LATHROP: (Pounds on table.)

SENATOR ASHFORD: Thank you, Senator Lathrop.

SENATOR LATHROP: You're welcome.

SENATOR ASHFORD: Someone's got to do it.

SENATOR LATHROP: It's my job.

SENATOR ASHFORD: That's your job. Welcome to the Judiciary Committee. And we are...we have three bills or five bills today, starting out with LB868. Those of you who have been here before, and many of your have, we have a light system that we'd ask you to confine your comments to three minutes. And we have a little yellow light that comes on. We'd ask you to summarize, obviously, not counting questions and answers, that sort of thing. Let me introduce my colleagues: Senator Les Seiler from Hastings, Nebraska; Mark Christensen from Imperial, Nebraska; Colby Coash from Lincoln. Oliver VanDervoort over here is my committee clerk, and Jen Piatt, to my right, is counsel. Senator Steve Lathrop, who pounds the table from time to time, is from Omaha; and Amanda McGill from Lincoln. So it's going to be a good day. LB868, Senator Karpisek.

SENATOR KARPISEK: Thank you, Senator Ashford and members of the committee. For the record my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. This bill has caused quite a stir. And I didn't intend for it to, but that's how it usually goes. I've always been a supporter of having a clearly defined line on the use of public resources for private use. I carried LB626 in 2009 which was the Mike Nolan ordeal that happened in Norfolk about using state or city computers. This is a continuation of the belief...of my belief that resources that the taxpayers pay for should be used for public purposes. Police officers using their uniforms, radios, cars, badges, etcetera, for personal use, such as private party security, bouncers at bars,

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private traffic patrol, are outside the scope of their normal course of practice. The aim of this bill is that when officers are hired individually for outside work they would not be able to use their publicly paid for uniform and all of those things. The bill's goal is not to affect when one governmental entity hires the other entity to aid in enforcement. For example, if the university contracted with the State Patrol to provide traffic control during a Husker football game, then the use of public resources would be allowed. However, if the university went directly to the officers individually and hired them to do traffic control, the officers could do this but they could not use anything issued by the State Patrol to do it. I feel that by allowing officers to use their governmental-issued resources outside the scope of their assigned duties is a misuse of taxpayers' resources, a safety risk for citizens because it gives the impression you have on-duty officers working, and any potential liability of political subdivision. So I've been getting a bunch of e-mails saying what a terrible idea this is to make it illegal for off-duty police officers to work...to moonlight. That's not the intent of the bill. I appreciate that they do, do these moonlighting jobs. I just don't think that they should be wearing their government-issued uniform, badges, guns, cars, any of those things. I hear a lot, well, the uniform makes a big difference. Great. Buy a uniform. Don't use the taxpayer services. And I've tried to liken this to the city sand-truck driver to take his...the truck home over the weekend and move dirt for people and get paid. We don't allow that. That bill, LB626, was about incidental and de minimus use of government equipment. I don't think that this is incidental nor de minimus. Again, I didn't intend to create such a stir. I guess I almost feel that this is redundant. I don't understand why anyone is allowed to use these things for personal gain. Again, nothing to say that the officers aren't doing a good job, none of that stuff. It's just about public funds. I'd be glad to try to answer any questions. [LB868]

SENATOR ASHFORD: I don't see any, thanks, Russ. [LB868]

SENATOR KARPISEK: Thank you. [LB868]

SENATOR ASHFORD: Proponents? Any opponents? John. [LB868]

JOHN WELLS: Senator Ashford, thank you. Members of the Judiciary Committee, John Wells, W-e-l-l-s. I am president of the Omaha Police Officers Association. Every day dozens of off-duty uniformed Omaha Police officers work in bars, restaurants, schools, collegiate sporting events, high school sporting events, and it serves a function to the city. The city simply cannot provide a police officer at every location to every person that wants to have some sort of police presence. This bill would impact not only our ability to do that, but it would cost the city a tremendous amount of money just in the response because a lot of these places having uniformed, off-duty police officers prevents an on-duty police officer from having to answer a radio call at that location. An example is at the University of Nebraska Medical Center in Omaha, Nebraska, which is a trauma center. They frequently are the end result where gang violence ends up there because of the fact that they're a trauma center. That off-duty police officer's staff and work

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provides security for that emergency room, preventing on-duty officers from having to do that function. Many events, like the College World Series, the Berkshire Hathaway shareholders meeting, and any events at the Qwest Center are staffed primarily by off-duty police officers, which would adversely impact the city financially if they had to staff that with on-duty police officers. But more importantly, not all of our uniforms and equipment are purchased by the city. Some of that equipment is purchased by individual officers. But at the end of the day it is a symbiotic relationship that the city depends on us as police officers to exercise our right to work off duty, to use our skills, and also it provides a service to the taxpayers. Thank you. [LB868]

SENATOR SEILER: Officer Wells,... [LB868]

SENATOR ASHFORD: Yeah, yeah, just a second, John. I mean, I know...Senator Seiler and then Senator Lathrop. [LB868]

JOHN WELLS: Oh, sorry. Yeah. [LB868]

SENATOR SEILER: Officer Wells, years ago I used to represent the FOP and in those, some of those, contracts I drafted, you...some of the municipalities required the officers to carry a gun 24 hours and be...basically be considered to be on duty 24 hours a day. Is that any part of your contracts? [LB868]

JOHN WELLS: It is not specifically in our contract that we are required to carry a gun 24 hours a day; however, it is in our policies that we are reminded that we are on duty 24 hours a day, 7 days a week. Should an emergency arise, we are expected to respond to it. [LB868]

SENATOR SEILER: Okay. Thank you. [LB868]

SENATOR ASHFORD: Senator Lathrop. [LB868]

SENATOR LATHROP: John, my question is a simple one. When you're at the Qwest Center, for example, doing a Creighton basketball game, if you see a crime committed, can you in your capacity as an off-duty police officer wearing a uniform and so forth arrest somebody? [LB868]

JOHN WELLS: Absolutely. [LB868]

SENATOR LATHROP: Okay. Thank you. [LB868]

SENATOR ASHFORD: Yeah, and my only other...my follow-on to that just...I assume that, you know, there's something in municipal code or something somewhere that allows this on a local level, correct? [LB868]

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JOHN WELLS: That is correct. [LB868]

SENATOR ASHFORD: So would that be in the code or is it just policy or how... [LB868]

JOHN WELLS: It's in the code; it's in our contract; it's ultimately governed by the department. The department, they've sent a letter, I believe. They're in opposition, as well, the Omaha Police Department. [LB868]

SENATOR ASHFORD: You...okay. [LB868]

JOHN WELLS: They govern and regulate. They inspect all of these sites to make sure there's no conflict of interest, that it's a safe environment, that it's not detrimental to the mission statement of the Omaha Police Department, and it follows city codes to have us working off duty in these locations. [LB868]

SENATOR ASHFORD: Okay. Good. Thanks, John. Any other...? Sheriff. [LB868]

TERRY WAGNER: I struggle to get in this chair. [LB868]

SENATOR ASHFORD: Yeah, that's intentional. (Laughter) [LB868]

TERRY WAGNER: (Exhibit 1) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff of Lancaster County. Today I'm here on behalf of both my office and the Nebraska Sheriffs Association in opposition of LB686...LB868. I'm a little dyslexic there. You know, I've talked with Senator Karpisek about this bill. He's always been a strong supporter of law enforcement and I hate being here in opposition to one of his bills. But this really is a multifaceted and a very complex issue. You'll notice in my testimony that I passed out I also included two of our policies. One is our off-duty employment policy--and we just got through revising that policy; as you can see, it is very complex--and then our off-duty law enforcement action policy. So I think you mentioned, Senator Lathrop, law enforcement action off duty, and it's covered by that policy. There are basically three types of off-duty employment. There's mandatory and/or optional employment through the sheriff's office, in our case, or through any agency to fulfill grant requests or to handle any of the special events. There's also working in an off-duty capacity for a private employer, paid by that private employer. An example would be street dances, high school or UNL sporting events, road races, those kinds of things, and then working in a non-law enforcement capacity, such as a carpenter or painter or roofer, whatever, whatever the deputy chooses to do. You know, we have an interest in all of these simply because we don't want our employees overtired, overworked when they come working for us. But option number two, really, the off-duty employment for a private individual, is what this law pertains to. You know, the guiding principle of our office is that if we're

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going to allow deputies to work in an off-duty capacity for a private employer, it has to...does it serve a public interest? And that really is our guiding light in allowing deputies to work off duty for a private employer. If a village holds a dance, they're going to hire some deputies to work crowd control for that dance. If they're not...if we don't have off-duty deputies working there, we're going to have to supply on-duty employees to monitor those situations. Off-duty officers are expensive. There's no question about that. Some organizations have chosen to use private security that don't have powers of arrest. They also don't carry that deterrent factor that law enforcement officers carry when they work in those capacities. We mentioned earlier the authority to enforce laws 24 hours a day when deputies are working in those capacities. In our office, anyway, they're expected to handle any law enforcement matters that come before them so it doesn't detract from the employees on the road. So with that I would be happy to answer any questions you might have and I would urge you not to advance LB868 out of committee. [LB868]

SENATOR ASHFORD: In spite of Senator Karpisek being a law... [LB868]

TERRY WAGNER: Pardon me? [LB868]

SENATOR ASHFORD: In spite of Senator Karpisek being such a strong supporter of law enforcement? [LB868]

TERRY WAGNER: Yes, despite that. [LB868]

SENATOR ASHFORD: Okay. Senator Chambers. [LB868]

SENATOR CHAMBERS: Sorry I'm here late. [LB868]

TERRY WAGNER: I was sorry you weren't going to be here so I...okay. [LB868]

SENATOR CHAMBERS: (Laugh) Oh, okay. When I come in late, I'm not sure what has been said before, so I'll ask you a couple of questions. Are your people allowed to wear their uniforms when they work for a private person? [LB868]

TERRY WAGNER: Yes, sir. [LB868]

SENATOR CHAMBERS: Who is that individual's boss while wearing your uniform and working for the private person who is paying him or her? [LB868]

TERRY WAGNER: Well, there...they have to adhere to our policies off duty, as well as on duty, with regard to any off-duty employment they might take. Their boss, they're being paid by the private individual within those guidelines of our policies. Does that make sense? [LB868]

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SENATOR CHAMBERS: Who has the final word though? If that person who is that officer's boss tells him or her, go stand over there by the wall, then that...he or she should go stand by the wall since he or she is in the employ of that person, correct? [LB868]

TERRY WAGNER: To a point, Senator. We run into those situations where a rule of an employer may not necessarily be a law violation, and therein lies a rub. We won't enforce rules of a private employer. We'll only enforce the laws of the state and the county. So... [LB868]

SENATOR CHAMBERS: No, I don't mean it's a crime. I mean just duties, just carrying out what the boss says ought to be done. [LB868]

TERRY WAGNER: As long as it's within our guidelines, yes. [LB868]

SENATOR CHAMBERS: So who is the officer's master at that point? Because I'm sure you've heard that famous expression by a famous person, a man cannot serve two masters,... [LB868]

TERRY WAGNER: Yes, sir. [LB868]

SENATOR CHAMBERS: ...so who is the master? [LB868]

TERRY WAGNER: We are. [LB868]

SENATOR CHAMBERS: Then why is that person while under your direction and control allowed to work for this private citizen and do that private citizen's bidding for pay? [LB868]

TERRY WAGNER: A couple of reasons. Number one, if we didn't have off-duty deputies working some of these special events, we would have to supply on-duty personnel to handle the crowds or the event or whatever the case may be. [LB868]

SENATOR CHAMBERS: Let's take it a point at a time. Isn't that what your job and your department's responsibility would be? [LB868]

TERRY WAGNER: It is. But should all taxpayers have to pay for a street dance in, say, Denton, Nebraska? I think that the town of Denton should pay for the security for that street dance since they're benefiting from it. And that's sort of the thought behind that. [LB868]

SENATOR CHAMBERS: So the only public service that the officers should be required

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to perform are those that relate to tracking down speeders, catching people who commit crimes, and work along that line, not crowd control? That's not a part of their duty? [LB868]

TERRY WAGNER: Oh, absolutely, it is, yes. [LB868]

SENATOR CHAMBERS: When that person wears the uniform, he or she is hired by the private person to convey to the public that this is a law enforcement officer. Isn't that the purpose? [LB868]

TERRY WAGNER: In large part, yes. [LB868]

SENATOR CHAMBERS: Is the...is your department responsible in terms of liability for anything that officer does while moonlighting? [LB868]

TERRY WAGNER: Yes, sir. [LB868]

SENATOR CHAMBERS: So then the taxpayers are assuming a liability for your officers when they're in the private employ of a private citizen who is paying them wages? [LB868]

TERRY WAGNER: That's correct. [LB868]

SENATOR CHAMBERS: The city is liable. [LB868]

TERRY WAGNER: Yeah, the county. [LB868]

SENATOR CHAMBERS: And you don't see any problem with that? [LB868]

TERRY WAGNER: Well, Senator, there...number one, the employer does have to have insurance for the employees. However, our deputies have to adhere by our policy. And if they violate our policy, I mean, they're under the same guidelines working off duty as they would be on duty with regard to citizens' complaints and accountability to the public. So we make sure that everybody knows that, the employer knows that, the employee knows that, and that the employees are still our employees being paid by a private individual. [LB868]

SENATOR CHAMBERS: To keep this on a state level and not involve the federal government, should a person who is a member of the Nebraska National Guard be allowed to work for a private citizen while wearing the National Guard uniform and all of the regalia that identifies him or her as a member of the National Guard? [LB868]

TERRY WAGNER: Should they? [LB868]

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SENATOR CHAMBERS: Yes. [LB868]

TERRY WAGNER: I suppose, if an employer wanted to hire them in that capacity. [LB868]

SENATOR CHAMBERS: And you don't think there would be anything wrong with the National Guard functioning like that? Or you hadn't thought it through? [LB868]

TERRY WAGNER: I hadn't really thought about that, no, sir. [LB868]

SENATOR CHAMBERS: Okay, and that's all I'll ask you because I'm sure there will be others who will testify. [LB868]

TERRY WAGNER: Okay. Okay. [LB868]

SENATOR ASHFORD: Thanks, Terry. Oh, I'm sorry, Senator Coash. [LB868]

SENATOR COASH: Thank you, Senator Ashford. Sheriff, maybe Senator Chambers got the answer. I just want to ask in maybe a different way. If an off-duty officer is employed...you know, I see your deputies at the gas station near the Capitol here, you know. [LB868]

TERRY WAGNER: Right. [LB868]

SENATOR COASH: If that officer is injured in the course of performing his duty on the payroll of the private entity, who pays the work comp bills for that officer's injury, the employers or...the private employer or the sheriff's department? [LB868]

TERRY WAGNER: The private employer. [LB868]

SENATOR COASH: The private employer does. [LB868]

TERRY WAGNER: That is correct. [LB868]

SENATOR COASH: All right. Thank you. [LB868]

SENATOR ASHFORD: They do, even if, okay, they're contracted on a temporary basis? [LB868]

TERRY WAGNER: Correct. [LB868]

SENATOR ASHFORD: They're still covered? [LB868]

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TERRY WAGNER: We make sure that private employers... [LB868]

SENATOR ASHFORD: Do they provide a certificate of... [LB868]

TERRY WAGNER: Number one, private employers have to go through our office and we have to okay that and, again, it has to be for that public benefit. And, secondly, they have to provide proof of insurance and workers' compensation insurance for our employees when they're in their employ. [LB868]

SENATOR ASHFORD: Okay. Thanks, Terry. [LB868]

SENATOR CHAMBERS: I have... [LB868]

SENATOR ASHFORD: Yes, Senator Chambers. [LB868]

SENATOR CHAMBERS: Senator Coash made me think of a question. Are your officers allowed to work for bars and taverns? [LB868]

TERRY WAGNER: No, sir. [LB868]

SENATOR CHAMBERS: Can they work for clubs if there's no alcohol served, private clubs having a function? [LB868]

TERRY WAGNER: Okay, let me retract the last...my last affirmative answer because there are places that hire deputies in the county, like Pla Mor Ballroom, for instance. [LB868]

SENATOR CHAMBERS: Could you say that a little louder, please? [LB868]

TERRY WAGNER: There's a private ballroom west of town and they hire deputies on a regular basis when they have large crowds there. [LB868]

SENATOR CHAMBERS: Well, I don't mean just a ballroom. I mean, like I had said, a tavern or a bar, and you said no. [LB868]

TERRY WAGNER: We don't allow deputies to work at a tavern or bar but we do let them work in liquor-licensed establishments on occasion. [LB868]

SENATOR CHAMBERS: Now here's where I'm having a difficulty reconciling what you're saying with what I know happens, at least in Omaha. Your deputies would not be patrolling that area, so it's not work that the taxpayers would have to pay a sworn officer who is on duty to do because that sworn officer would not be standing at that place

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guarding it. That officer is not carrying out the duties of a sworn officer at that time, so it's not saving the taxpayers anything. It's letting this guy or this lady earn extra money and use the position of a sworn officer, a public employee, to make money by virtue of being a public employee, wearing the uniform of that employee, and telling the public that while working for you as a private citizen, or me, as your employee, I will do for you at your establishment what I do for the city when I'm out there on the street. And that's the idea that's supposed to be gotten across, isn't it? That's why you want them to wear a uniform when they're doing the work of a private person, isn't it? [LB868]

TERRY WAGNER: I'm not sure I understood all of your question but let... [LB868]

SENATOR CHAMBERS: Okay. If I...let me put it simply. When I hire the person, I want that image of a cop. And when you let that person wear that uniform, you want the public to get the notion that this is a cop. [LB868]

TERRY WAGNER: Yes, sir. [LB868]

SENATOR CHAMBERS: Isn't that true? [LB868]

TERRY WAGNER: That's correct. [LB868]

SENATOR CHAMBERS: So I think that's a misuse of the office, just so you know my position. And whoever comes up can counter it, but I will let you respond since you're here. [LB868]

TERRY WAGNER: We do use...but it is a force multiplier for us. You know, for example, a street dance in a small village, if in one of the villages the Legion Club is the sponsor of the event and they serve beer there, we have a number of deputies that work those events. They'll have 2,000 or 3,000 people there. If we didn't have off-duty deputies there, we would have to call in extra people and supply people for that crowd control and to monitor the alcohol consumption and use and so on and take care of any of those problems. The off-duty deputies that are there handle those law enforcement issues so that the deputies that are working in the rest of the county can do their normal response. [LB868]

SENATOR CHAMBERS: Then maybe I misunderstood. Your deputies don't work for private persons at their business establishments then. They wouldn't work at grocery stores or filling stations or anything like that. Your deputies don't do that kind of work in their uniforms, correct? [LB868]

TERRY WAGNER: No, sir, no. [LB868]

SENATOR CHAMBERS: Oh, okay. [LB868]

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TERRY WAGNER: I mean, I guess we've never been asked to do that, Senator, and I don't know...we'd have to evaluate each situation as it comes up whether or not we would allow an employee in uniform to work at a grocery store. [LB868]

SENATOR CHAMBERS: But then it's not against your policy for the employee to work at a grocery store. [LB868]

TERRY WAGNER: No, not if they...not if it's...if it meets the public good. But I can't honestly say in good conscience that I would allow that to happen because I don't...I would not see the greater public good there. [LB868]

SENATOR CHAMBERS: I got you. Okay. Thank you. [LB868]

SENATOR ASHFORD: Thanks, Terry. [LB868]

TERRY WAGNER: Thanks, Senators. [LB868]

SENATOR ASHFORD: Any other opponents? Any neutral testifiers? Senator Karpisek. [LB868]

SENATOR KARPISEK: Thank you, Senator Ashford and the committee. Again, this bill does not say that they cannot work off duty. I know that that's what...especially what Mr. Wells is trying to get across to you that it does. It does not. They can work off duty. I'm just saying they shouldn't wear their taxpayer-funded clothes, gun, whatever it is that the taxpayers bought. I don't think I can have a fund-raiser up in the Rotunda. I don't think that I can do that. Maybe I can. Patrick wouldn't like it, would he? (Laugh) Again, a motor grader driver in Omaha can't take the motor grader home over the weekend and clear people's driveways for money. That's my whole point. It's just what they wear. If they want to go out and buy their own uniform and their own badge and have their own gun, great. I'm not trying to say that it doesn't save money to have them work, and I'm very glad that they do, do the work. I've been getting a lot of pushback from Omaha so there must be a lot of this going on in Omaha. I don't know. Again, Sheriff Wagner is right, I'm...I've always tried to stick up for the police. I hang out with a lot of them. I shouldn't have told Senator Chambers that. (Laugh) [LB868]

SENATOR ASHFORD: That opens up a whole thing. [LB868]

SENATOR KARPISEK: (Laugh) Yeah, I know. I'm friends with a lot of them. That's not the point. [LB868]

SENATOR ASHFORD: You were fine until about 30 seconds ago. [LB868]

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SENATOR KARPISEK: Yeah, I know. I always have to be honest. That is not the point here at all. I realize, you know, some of them told me, we don't make much money, we have to go out and moonlight. I get that and I'm sorry, but don't wear that stuff. [LB868]

SENATOR ASHFORD: Yeah. Senator Chambers. [LB868]

SENATOR CHAMBERS: Senator Karpisek, do you think an FBI agent should be allowed to wear that vest that says "FBI" on it and work for a private person? [LB868]

SENATOR KARPISEK: No. [LB868]

SENATOR CHAMBERS: A member of the Alcohol, Tobacco and Firearms and Explosives Bureau should be allowed to wear insignia that identifies him or her as a member, an employee of that bureau working for a private individual? [LB868]

SENATOR KARPISEK: Not if they're making money at it, no. [LB868]

SENATOR CHAMBERS: How about somebody who...should the Attorney General be allowed to practice law in a private capacity and let people know that he or she is the Attorney General? [LB868]

SENATOR KARPISEK: I don't think so. [LB868]

SENATOR CHAMBERS: And it's not allowed. Do you think the superintendent of the State Patrol, wearing all of his regalia, should be allowed while wearing that uniform to go work for a private individual? [LB868]

SENATOR KARPISEK: In fact, Senator, I think the State Patrol does not allow their officers to wear their things if they are working another job, so no. [LB868]

SENATOR CHAMBERS: And I know they have a higher standard than local police and the county sheriffs, but I wanted to get that into the record to show that there are law enforcement people who understand the dividing line between you operating as a cop and operating as an employee of an individual. I'm not opposed to them working for somebody else. But stop saying that they're police officers 24 hours a day because, if they're police officers 24 hours a day, they cannot serve two masters. But that's what they want to do. I'm glad you brought the bill and personally I will support it. And I'm sorry I wasn't here when others testified against the bill because I have...I'll give an example. I know of a couple of instances where there were clubs involved and there were shots fired by officers at moving vehicles and they were dressed as cops. And I think it is unprofessional; I think it is unethical; and I think that those who would have pride in being a sworn officer would not debase the uniform in that fashion. This is my opinion. I don't believe that when I was a private in the military that I could have put on

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my steel pot, put on...well, there's a backpack but it's quite a bit bigger than what they wear...put on my boots, tucked the cuffs down in my boots, and go out there with my M1--that's a long time ago; they use AK-47s now--go down there with my M1 and stand in front of a tavern and be hired by this tavern keeper or this club keeper or even direct traffic. I'm glad you brought the bill. And the reason I'm really regretful about not being here, I would want to hear the rationale of these people who would say that they are behaving professionally when they do that. We have laws against conflicts of interest, even when it comes...well, I'm preaching to the choir, but those are all the questions that I would have of you. Thank you, Senator Karpisek. [LB868]

SENATOR KARPISEK: Thank you... [LB868]

SENATOR CHAMBERS: Oh, one thing: Evil companions corrupt good manners. Now I'm not going to say which of the party to you all's relationship is... [LB868]

SENATOR KARPISEK: Sometimes I even hang around with you though. [LB868]

SENATOR CHAMBERS: Hmm? [LB868]

SENATOR KARPISEK: Sometimes I even hang around with you if you'll let me. [LB868]

SENATOR CHAMBERS: I said...but you're not my companion. (Laughter) [LB868]

SENATOR KARPISEK: I would just like to say, too, I don't think an officer needs to be in uniform to make an arrest, just kind of to Senator Lathrop's point. The other thing about the liability is we're talking about what if the officer gets hurt, but what if the officer hurts someone while doing this, shots fired or get in a struggle? I don't know, and maybe I should have brought that up sooner, maybe Sheriff could tell me, but that's just another concern. Where does all this lay? Again, I'm glad they're there. I'm glad they're doing it. I just don't think it should be taxpayer-funded clothes or any of that to go with it. [LB868]

SENATOR ASHFORD: Thanks, Russ. [LB868]

SENATOR CHAMBERS: One comment: For your information, since we do occasionally see eye to eye and work together, verily, verily, I say unto you, my son, you cannot serve two masters. [LB868]

SENATOR KARPISEK: I'm sure you'll remind me if I do. (Laughter) Thank you, committee. (See also Exhibits 6 and 25.) [LB868]

SENATOR ASHFORD: Okay. Senator Dubas, LB890. [LB890]

SENATOR DUBAS: (Exhibit 2) Good afternoon, Senator Ashford and members of the

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Judiciary Committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. I represent Legislative District 34. Before I bring my actual introduction of the bill, I want to be very clear and on the record: This legislation is not introduced because of the pipeline. There's a lot of attention being paid to that issue right now. That's not where this legislation comes from, nor do I introduce this legislation as an indictment on current practices that many of our entities do when they're acquiring property. I know many of our state entities go the extra mile trying to make sure that they're doing it right and taking care of business appropriately. Bottom line for me, I've been working on this issue a very long time. It's about the landowners and the landowners' rights, and that's what I'm seeking, to make sure that the landowners know what their rights are. So as I stated, I've been working on this issue for at least the last four years in regards to the use of eminent domain. The very use of those words creates angst and tugs at something we hold very dear: our right to own property. The use of eminent domain is the taking of private property. Even if it's for the public good, it should be used cautiously and with just compensation. I have worked long and hard on this issue, including my work on the oil pipeline in the special session when we passed LB1 to create state authority for siting of major oil pipelines, ensuring that eminent domain could not be used without some state oversight. Unfortunately, we came back the following session and passed LB1161 which weakened the intent of LB1 and those specific eminent domain requirements. My office has received countless calls from landowners across the state asking what are their legal rights, and the best answer that I can give them is: Get a lawyer. I never felt it was right that the landowner had to spend their money to find out what their rights are when a public utility or other agency wants to use their land. I am determined to pass legislation which empowers landowners and protects their rights as they face the potential of their land being taken by eminent domain. We do have many entities in Nebraska that work very hard to include the public in their planning of their projects, and I do appreciate that. These groups know that they have the power to use eminent domain and they do everything they can to create a transparent and inclusive process. Our statutes are very clear about the actual process of eminent domain, but what has been unclear is when the potential to use eminent domain enters into the negotiations. What are those landowners' rights? The potential for empty threats or bullying does exist under the current law, leaving landowners to feel forced to make uninformed decisions. Last year, I brought to this committee LB152 to establish a clearer understanding of eminent domain for landowners. That bill would have required a condemnor to have all necessary permits for the project approved prior to negotiation, creating a present plan and present public purpose. Needless to say, that legislation generated a great deal of opposition, and so I pledged to work with impacted parties and come back with legislation that everyone could support. So my staff and I spent another interim looking for ways to ensure landowners know their rights and to reduce that anxiety that is involved when landowners are approached to sell or provide easements for their land. We took a look at what other states have in place. Some states actually have positions in their ombudsman's office whose sole job is to inform landowners of their property rights. Many have what is referred to as a landowners' bill

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of rights, and I believe that was something that we could use, put in place to get everybody on board with. I invited interested parties together several times during the interim to attempt to get everyone on board with a policy that creates minimum standards for everyone who has been granted the power of eminent domain by the state. I can show you multiple drafts of bills to create such minimum standards. This final, scaled-down bill is the result of those meetings. I believe this final bill is simple. It requires all entities who have been granted the power to use eminent domain to provide landowners with a pamphlet before entering into negotiations. The Attorney General's Office would develop the pamphlet outlining the landowner's rights and make it available in print or electronic format. Currently there is a requirement that entities with eminent domain powers provide notice to landowners 45 days prior to negotiations, and there are several entities which are exempt to those requirements. LB890 removes those exemptions to require all entities to provide the notice and include the pamphlet in that notice, and perhaps that's where the consternation arises for those entities who have been exempt from that notification process in the past. While some entities are on board and have no problems with the bill, I can't say that for everyone. After trying to reach a compromise and removing language that caused concern, it was my hope to come to you with a bill that had no opposition. Unfortunately, that is not the case. There will likely be lukewarm support at best and more than likely opposition. It's really hard for me to believe that wanting something as simple as providing landowners with clear guidelines as to their property rights would be difficult to achieve. And while I appreciate everyone who provided their input on this bill, it is still very disappointing that I can't get consensus on providing a simple pamphlet. It's a pamphlet. How hard should that be? This bill and my motives have been examined from every angle. At every meeting that I had I stated I was only looking for minimum standards for entities to abide by which would help landowners know their rights and which I believed at the end of the day would remove some of that anxiety and actually help to make negotiations move forward in a smoother fashion. I do disagree with the contention that this bill will delay construction to the degree that may be presented later or impede economic development or cost millions of dollars to employ. These are the same arguments that opponents of the pipeline siting laws made, the same boilerplate arguments made whenever the Legislature attempts to empower citizens with the information on their legal rights. I do not believe the sky is falling. I believe LB890 is a good bill. I encourage the committee to advance it. I'll be happy to take questions from the committee. I don't plan on staying to close because, as I've stated, my staff and I have spent an extreme amount of time on this piece of legislation. I know what the arguments are. I've done my very level best to meet and accommodate those arguments. And short of taking this bill and making it voluntary, I don't know what I have left to actually do. So I will waive my closing. I did also have a letter distributed from the Farm Bureau who is in support of LB890. So with that I would attempt to answer any questions the committee may have. [LB890]

SENATOR ASHFORD: Yes, Senator Christensen. [LB890]

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SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. Have you seen this revised... [LB890]

SENATOR DUBAS: Yes, I have. [LB890]

SENATOR CHRISTENSEN: And are you doing anything to try to correct that for Department of Roads or you feel like that's part of the issue, too, or...? That's one I just got done reading is Department of Roads. [LB890]

SENATOR DUBAS: Right, and, you know, I'm not going to presume to speak for the department. I know they believe that this...having this 45-day component of the notice will add this amount of money, this amount of difficulty to their ongoing process. I can sit here and say that I disagree with the fiscal note, but I don't...at this point in time don't have any ability to, you know, to actually say, this is why I think it's out of line. [LB890]

SENATOR CHRISTENSEN: Okay. Thank you. [LB890]

SENATOR ASHFORD: Yes. Senator Seiler. [LB890]

SENATOR SEILER: Senator Dubas, on page 4, lines 15 and 16, I'm wondering if you can...ran this by a tax lawyer: Eminent domain will not be an issue unless good-faith negotiations fail. The way I remember the tax law, which gives your...the client, the landowner, a large benefit is the threat of eminent domain had to be from the get-go. This would indicate that eminent domain does not become a part of this unless the negotiations fail. It would appear to me that an eminent domain threat as the IRS allows it would not be an issue and you could lose considerable amount of taxes by just that language. I don't...I'd like you to check it. [LB890]

SENATOR DUBAS: Okay. [LB890]

SENATOR SEILER: It's been two years since I've been involved in one of those, but the eminent...in my memory is the threat of eminent domain had to be from the get-go and not interjected later. [LB890]

SENATOR DUBAS: And I get that and I understand that the landowner has to understand that, at some point along the line, if there's not an agreement reached, eminent domain is a possibility. [LB890]

SENATOR SEILER: Yeah, but you want the eminent domain even if there is an agreement reached because that gives you the tax benefit. [LB890]

SENATOR DUBAS: We'll look into that. [LB890]

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SENATOR SEILER: Thank you. [LB890]

SENATOR DUBAS: Thank you. [LB890]

SENATOR ASHFORD: Thanks, Annette. I don't see any other questions. [LB890]

SENATOR DUBAS: Thank you. [LB890]

SENATOR ASHFORD: Proponents of LB890, those for the bill. Lukewarm proponents? Okay. Opponents of LB890. [LB890]

CHARLES HUMBLE: Senator Ashford, I'm Charles--and members of the committee--I'm Charles Humble of Erickson and Sederstrom in Lincoln, 301 South 13th Street, Suite 400. I appear here today in opposition to the bill on behalf of the Nebraska Power Association. The issues that we are particularly concerned about really goes toward the nature of eminent domain and what it is. We have been as an association and we provide your electricity in this state and we have followed the procedures religiously and even gone way beyond the actual requirements of the law. We're the people that Senator Dubas talked about in terms of following what we are supposed to do and even going beyond in terms of soliciting inputs from private property owners, in giving them information, having public hearings, conducting open houses, creating Web sites, and doing all of these things to build the rapport, respecting private property rights. Now the exercise of eminent domain is nothing new. It goes clear back to the sovereignty of England and forward to our laws. A critical point in eminent domain law is a precursor to being able to file an action in eminent domain you must engage in good-faith negotiations, and it's a complete defense if you don't. In other words, the judge can, before making any decisions on compensation, throw you out if you don't engage in good-faith negotiations. And you don't want to get to the end of a project and find out that you cannot proceed any further. The exercise of the power of eminent domain then flows after you've engaged in good-faith negotiations. And we take a critical look at all of our processes and continue to review those on a daily basis. But let me also explain that the NPA is not opposed to a landowner's bill of rights or a pamphlet. We're just opposed to additional legislative bills because we are afraid of what may happen in terms of limiting and making the process even more expensive. You may not need to put the requirement for a pamphlet within the statute; but produce one, have the Attorney General produce one, and the industry take a look at it. The other thing is--very quickly I'll conclude--there is an ambiguity in the bill in terms of removing the limitation on, for instance, municipalities of not being able to negotiate, you know, within the city limits. And that...we have in the electric companies in urban areas dozens and dozens and dozens of very small takings of easements and that kind of thing. And you would have to go through the entire process of not only the 45-day notice but all that's set out in the bill as requirements to provide in that notice. [LB890]

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SENATOR ASHFORD: Thank you, Charles. [LB890]

CHARLES HUMBLE: Thank you. [LB890]

SENATOR ASHFORD: Any questions of Mr. Humble? Thanks, Charles. [LB890]

CHARLES HUMBLE: All right. Thank you. [LB890]

SENATOR ASHFORD: Next opponent. [LB890]

GARY WESTPHAL: Mr. Chairman, members of the committee, my name is Gary Westphal, G-a-r-y W-e-s-t-p-h-a-l. I am the CEO and general manager of Butler Public Power District. I'm here representing NREA, the Nebraska Rural Electric Association, and the 34 public power districts and co-ops throughout the state. I do appreciate the bill. In fact, we're for the most part in favor of the bill. We appreciate that Senator Dubas cares about the concerns of landowners. We also respect private property rights. We think that's important. We appreciate the efforts of Senator Dubas to educate landowners and we have no objection to providing a brochure to our landowners when we have issues like this. Our concern is the 45-day issue. That...from time to time, even though we encourage our customers to come in early and tell us when they want to do something, more often than not they come in at the last minute. For example, an irrigation customer may come in. They may buy a property in May and come in and say, we'd like to put in a well or replace a natural gas well or propane well and put in electric. A 45-day issue could put us into we can't get you served until August. And we're really talking about distribution lines, the smaller lines that go with transformers that serve houses and irrigation properties. We also have people who build houses that come in at the last minute: We're going to build a house, we'd like to be able to get electricity to it. And generally we're not talking about a lot of line, a lot of miles of line, one, two, three poles, so it's not a huge issue. We've never really had any issues of eminent domain, at least in Butler Power District, so far as the folks that have been there longer than me talk about. We generally can work out issues with the landowners. And so again we applaud the efforts of doing something, making sure we treat the private property rights. The 45 day is a concern and we would respectfully ask for a change in that part of the bill. [LB890]

SENATOR ASHFORD: Okay. Thank you. Any questions? I don't see any. Thank you, sir. Next opponent. Neutral. Oh, do we have an opponent back there? Oh. Let's go with that and then... [LB890]

RANDY PETERS: (Exhibit 3) Good afternoon, Chairman Ashford, members of the committee. My name is Randy Peters, R-a-n-d-y P-e-t-e-r-s. I'm the Director-State Engineer of the Nebraska Department of Roads and I'm here to present testimony in

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opposition to LB890. I want to start by expressing appreciation to Senator Dubas for working with NDOR to reduce the scope of her bill. Earlier drafts, like the bill she brought last year, would have discarded settled case law governing the department's condemnation procedures. Unfortunately, LB890 will still be very disruptive for Nebraska's highway program. For NDOR, I'm afraid the bill is a solution in search of a problem. At present the department is wholly exempt from the property acquisition procedures laid out in Sections 25-2501 through 25-2506. LB890 would only exempt us from the public hearing requirement in Section 25-2504. Our chief objection, like some of the others', is the new 45-day waiting period the bill would impose on our right-of-way process. No follow-up contact whatsoever would be allowed during that period. We would not even be allowed to respond to questions from the landowners. Adding a waiting period will delay almost all projects and in some cases could extend project completion into the next construction season if you miss the window in Nebraska with its climate conditions. Furthermore, on federal aid projects, the forced delay could put us out of compliance with the federal regulation that requires expeditious, noncoercive acquisition. The Nebraska state highway system dates back well over 100 years. The Legislature long ago entrusted us with acquiring rights of way across the state and we take that responsibility very seriously and always strive to be good neighbors. Most of the property we seek is adjacent to an existing highway. Our presence is no surprise to the landowners and when we do seek a completely new route we follow a corridor that has been laid out and publicized. Landowners usually have years of advance notification. The attached table shows the department's recent experience in acquiring and condemning property. The most recent year, 2013, is most representative because we are now in the Build Nebraska Act era where we are acquiring more right of way than in the recent past. Last year we acquired 399 tracts, approximately 5 percent of which required condemnation. [LB890]

SENATOR ASHFORD: Randy, why don't we just hold tight a second and see if we have any questions from the committee. And I don't see any so I think we get your point. Thanks, Randy. [LB890]

RANDY PETERS: Thank you. [LB890]

SENATOR ASHFORD: Next opponent. [LB890]

JILL BECKER: Good afternoon, Senator Ashford and members of the committee. My name is Jill Becker, last name spelled B-e-c-k-e-r, and I'm a registered lobbyist for Black Hills Energy. I'm appearing before you today in opposition to LB890 on behalf of the Nebraska Natural Gas Association, which includes Black Hills Energy, Source Gas, and Northwestern. And I guess the only thing I would add to the previous testifier's comments is that I think what you find is that utilities in Nebraska understand that eminent domain is something that should be used very, very sparingly. We certainly respect landowner rights and at the end of the day those same people are the ones in

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the communities that we serve and we certainly want to have a good relationship with them. And so eminent domain should be used as a last resort and very typically is. So with that, I'll take any questions from the committee. [LB890]

SENATOR ASHFORD: Seeing none, thank you. [LB890]

JILL BECKER: Thank you. [LB890]

RICK KUBAT: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Rick Kubat, K-u-b-a-t, here in opposition of LB890. Don't want to be redundant here. We at MUD take no issue with the Attorney General's pamphlet. Our issue is for the notice requirement for reasons you've already heard. Don't want to waste the committee's time and that's all I have. [LB890]

SENATOR ASHFORD: Thanks, Rick. Any other opponent? [LB890]

MIKE LOEFFLER: (Exhibit 4) Good afternoon, Senator. Members of the committee, my name is Mike Loeffler. Last name is spelled L-o-e-f-f-l-e-r, and I'm the senior director of external affairs for Northern Natural Gas company. I, too, will try to be brief. We are in opposition to LB890. One of the things that's being passed around right now is an explanation of the notice requirements that we are required to give. Northern Natural Gas operates 14,800 miles of pipeline in an 11-state area. In Nebraska we have about 1,660 miles of that. We are governed by the Federal Energy Regulatory Commission and we are governed by Section 7 of the Natural Gas Act which sets out the requirements for landowner notice. You'll notice that, if you go through the materials that we actually have more information that we're required to give than is provided in LB890. So the issue of giving landowner notification and providing them with the appropriate information is not an issue. I should also note that Northern Natural Gas has a long history of successful good-faith negotiations. We have field offices throughout our 11-state community and our business footprint. And so these members are members of the community, so we have to be good neighbors. Our employees sit and drink coffee with these people. So we have a good history of good-faith negotiations. On the second part of the bill, that's probably where we have our biggest concern, and that's on the 45-day period during which negotiations can take place. A couple of points. First, when we go and talk to a landowner, one of the first things they want to know is, well, what am I going to get paid? And it just seems like it would add to their frustration and to their anxiety if you said, well, we're not going to be able to talk about that for a 45-day period because of state law. The second thing I would point out is that natural gas projects are necessarily linear; that is, we have to do things in a certain manner and for...we have to have the scope of our project to know where we're going to be in order to conduct the thorough environmental analysis that's required by federal law. So by putting this 45-day period, you would, in a sense, in essence, have a one day for one day delay in those projects. So for these reasons we would oppose the bill. And I would be open to any

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questions. [LB890]

SENATOR ASHFORD: Thanks, Mike. I don't see any questions. [LB890]

MIKE LOEFFLER: Thank you. [LB890]

SENATOR ASHFORD: Other opponents? Neutral? [LB890]

JEFF DAVIS: Thank you Mr. Chairman, members of the committee. My name is Jeff Davis. I'm here on behalf of BNSF Railway. We are neutral on this bill because we think it represents a substantive improvement over the bill that was filed last year. It is similar to the process used in Texas where BNSF is headquartered so we are somewhat familiar with it. The only thing that I would add is, if the bill is going to move, we would like to see some clarification in section (3), Section 25-2503, which the first sentence, we would like to see it say that any agency which proposes to acquire private property for a public purpose, we'd just like to include the phrase, "pursuant to Section 76-701 to 76-726." That's the eminent domain statutes. That way, we just want to make clear that we can go out and bargain with people at arm's length. We don't want a duty imposed upon us where if our maintenance-of-way people are out there doing work and someone stops them and they say, hey, you know, the railroad may want to acquire some property here, you know, we don't want to get in a situation where our frontline employees are placed in the burden of having to, like, hand people a pamphlet or, as is probably more frequently the case where, you know, we do compete with Union Pacific and we work on economic development projects all the time, a lot of times it requires us to acquire property and we want to just acquire it at an arm's-length transaction and go from there. So that's all we're asking for. Thank you. [LB890]

SENATOR ASHFORD: Okay. I don't see any questions. Thank you, sir. [LB890]

JEFF DAVIS: Thank you. [LB890]

SENATOR ASHFORD: Other neutral testifiers? Senator Dubas waives so that concludes the hearing on LB890. (See also Exhibits 5, 7, and 25.) Senator McGill, LB1105. [LB890 LB1105]

SENATOR MCGILL: All right. I've got a couple bills here. I want to make sure I have the right book. [LB1105]

SENATOR ASHFORD: All right. This is LB1105, veterans courts. [LB1105]

SENATOR MCGILL: (Exhibit 24) Yes, it is, Senator Ashford. Members of the committee, I'm state Senator Amanda McGill, M-c-G-i-l-l, and this is the first of three bills I'm bringing to you today. I'll try to be brief with my introductions. First up, LB1105, to

establish veterans and service member court programs in Nebraska. As drafted, LB1105 calls on the Supreme Court to collaborate with the Department of Veterans Affairs and the United States Veterans Administration to maximize benefits and services for newly established veterans and service members court programs. I introduce this legislation in an effort to move Nebraska towards establishing a treatment-focused track for veterans and service members who come into contact with the criminal justice system. The exact number of veterans and service members involved in the criminal justice system in Nebraska is unknown and the specific fiscal impact cannot be determined at this time. The fact that we do not know how many veterans are involved in the justice system is a problem in and of itself. This lack of data has been discussed as a potential reason why we're not ready to establish a court program yet. However, I move forward with introducing LB1105 because I believe the Legislature needs to acknowledge in an official way that a high number of veterans a service members experience mental health and/or substance abuse addiction, and those who come into contact with the justice system should have the opportunity to receive treatment as a priority. As noted in supportive testimony from Martin Dempsey, the Department of Defense regional liaison for military families for the Midwest, as of 2008, 31 percent of the 1.8 million who served in Iraq and Afghanistan have a service-related mental health condition or traumatic brain injury. Further, the Department of Defense views veteran treatment courts as an option to reduce potential suicides. I believe the Legislature should do what we can to increase this treatment focus statewide. Thank you for considering this bill. We have testifiers who have been doing some work on Lancaster County to try to set up veterans courts or some sort of diversionary program and thought this would be a good opportunity for the committee to learn about what's happening and how in the future we can move forward on this. I know I'm also interested in mental health courts and I know Senator Ashford is interested in those as well, but I thought this hearing could start this conversation. [LB1105]

SENATOR ASHFORD: Well, I think this is very important, Senator McGill. I...Senator Seiler has a question and then I have a follow-up. [LB1105]

SENATOR SEILER: I agree, and as a Vietnam military person, I think this is very important. The question I have: So we've got the drug court, we've got service court, pretty soon we'll have another court, I'm wondering if, rather than having them as courts, they ought to be guidelines to the court system we have and not use the term courts. Have you explored that? [LB1105]

SENATOR MCGILL: No, I haven't explored that. I know in the letter from the courts that we've all received they talk about how they're looking...they're creating a five-year plan looking at all the different types of courts and mental health courts. I know that veterans courts are usually just a subsection of the mental health courts that have popped up in a lot of states. I don't know what the best for... [LB1105]

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SENATOR SEILER: And I can see that coming next. [LB1105]

SENATOR MCGILL: Yeah, exactly. I'm sure it will. [LB1105]

SENATOR SEILER: And my... [LB1105]

SENATOR MCGILL: And so I don't know exactly what this should look like, but I wanted to start this discussion so that... [LB1105]

SENATOR SEILER: Sure. [LB1105]

SENATOR MCGILL: ...future senators can continue down this path and make sure that we're treating the real causes of the problems and not just locking people up. [LB1105]

SENATOR SEILER: Well, if you get on that committee that's doing that, consider that as a program. [LB1105]

SENATOR MCGILL: Oh, yeah, that's a good idea. [LB1105]

SENATOR SEILER: Okay. Thank you. [LB1105]

SENATOR ASHFORD: Yeah, I, you know, just...and then we'll hear from John and the rest of the testifiers. But I, you know, I believe that there are 384 inmates in the adult correctional facilities in Nebraska who are veterans. And I...we don't know how many of those are...have mental illness. We do know that over 30 percent of our inmates are mentally ill so...have been diagnosed as mentally ill. [LB1105]

SENATOR MCGILL: And about 30 percent of veterans are, yeah. [LB1105]

SENATOR ASHFORD: It's a significant number. And I've visited the veterans courts in Minneapolis and I know Des Moines has one. Des Moines has a veterans court, as well as a mental health court, and it's...the judges...it's a diversion program and very, very successfully run in Minneapolis. I mean, they've had tremendous reduction in recidivism. And, I don't know, I suppose we could wait or we could do it anyway. (Laughter) [LB1105]

SENATOR MCGILL: Just move forward. [LB1105]

SENATOR ASHFORD: But anyway, I applaud you for bringing in this bill. Thanks, Amanda. [LB1105]

SENATOR MCGILL: All right. [LB1105]

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SENATOR ASHFORD: John, are you going to testify for this or... [LB1105]

JOHN HILGERT: I'll wait until after the Lancaster folks, Senator, if that's okay. [LB1105]

SENATOR ASHFORD: Oh, okay. [LB1105]

JOHN HILGERT: I will testify, Chairman. [LB1105]

SENATOR ASHFORD: Well, you seemed like you were going to be the next one but I... [LB1105]

JOHN HILGERT: I'm just anxious to support this. [LB1105]

JAMES CADA: Good afternoon. If it's my turn to speak, I will do that. [LB1105]

SENATOR ASHFORD: Yes. Yes. No, you go right ahead. [LB1105]

JAMES CADA: Thank you, Chairman Ashford and members of the Judiciary Committee. I am here today to speak in support of LB1105. I represent the...on behalf of the Nebraska State Bar Association and all kinds of veterans organizations as well. So far, as Senator McGill mentioned, over 250,000 Iraq and Afghanistan veterans, or 30 percent of the 900,000 veterans since 9/11, that are being treated in the VA health system have been diagnosed with PTSD, posttraumatic stress syndrome. Last December I attended the first Justice for Vets training meeting in Washington, D.C. It was a four-day meeting where judges, veterans, treatment personnel, court personnel gathered together to discuss the significant movement to establish veteran court systems throughout the United States. Of course, the Governor is hoping to avoid additional prisons. Setting up treatment courts and treatment courts for veterans to handle both their substance abuse and their mental health issues would serve to keep veterans, who have served us so well in times of combat, to assist them to avoid a criminal record and get them back on the proper track with treatment for both substance abuse and mental health issues. Studies have shown that the rates of domestic violence in military families may be two to five times the rate of the general population. Victims of domestic violence at the hands of veterans may be at particular risk due to the offenders' access to firearms, special training in combat, and use of weapons. We believe separate courts are important. We have a drug court, but the drug court doesn't treat the mental aspect of the whole issue. We have...the first major veterans court was established in Buffalo, New York, as you well know, and there are over 200 veterans courts in the United States, Houston, Brooklyn, Michigan, Philadelphia, Tulsa, Oklahoma, and many other locations. And veterans service organizations, such as the VFW and the Disabled American Veterans and other organizations, have been involved to provide assistance to veterans who come back from combat in Vietnam, Iraq, Afghanistan, who have symptoms of PTSD, traumatic brain injury, substance abuse,

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and depression. Those courts have been very effective in those...and they've testified and stated how important they have been in their communities and what they've done. Veterans who return from Vietnam or Iraq or Afghanistan with posttraumatic stress disorder and substance abuse problems, depression, traumatic brain injury, sometimes have the problems immediately; sometimes it takes a while. But because these problems co-occur, they overlap, and exasperate...exacerbate each other, treating one without training the other is likely to fail and we found that to be true as well. [LB1105]

SENATOR ASHFORD: Jim, thanks very much. And I know you do a lot of work in this area. Yes, Senator Chambers. [LB1105]

SENATOR CHAMBERS: You're a practicing attorney? [LB1105]

JAMES CADA: Yes, I am, Senator. [LB1105]

SENATOR CHAMBERS: And you handle cases for veterans? [LB1105]

JAMES CADA: Honestly, Senator, I help get them help. I don't actually provide them services. [LB1105]

SENATOR CHAMBERS: I'm talking about legal counsel for them. Do you...you don't... [LB1105]

JAMES CADA: No, because...Senator, because I am on the pretrial diversion program, because I am on the...county veterans service officer, because I'm...work with veterans homes, I don't think it would be right for me to work for both sides. So I actually refer them quite often. [LB1105]

SENATOR CHAMBERS: Okay. What would this court look like? How would it operate? Say I'm a veteran and I shot somebody. I go to this court? [LB1105]

JAMES CADA: That's correct. [LB1105]

SENATOR CHAMBERS: Or do I go to regular court? [LB1105]

JAMES CADA: No, you'd go to our court. [LB1105]

SENATOR CHAMBERS: Why? [LB1105]

JAMES CADA: Because we believe that the fact that you have served us, it's now time for us to serve you. We have personnel within the system that we could put into the system to help get you on the right track. [LB1105]

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SENATOR CHAMBERS: When I was in the army I didn't shoot at anybody, nobody shot at me, I didn't go overseas. So just because I was in the military, if I shot Senator Lathrop, then I should go to this court? [LB1105]

JAMES CADA: Not necessarily. With our pretrial diversion program in Lancaster County they have to have some posttraumatic stress disorder. There are some people who get into the military who have already had a bad record. We're very careful to take people who were good before they were in and now they've run into problems after they come back because of the stress of combat. [LB1105]

SENATOR CHAMBERS: What would the person be charged with who shot a person? If I shot Senator Lathrop, to keep it focused, what would I be charged with? [LB1105]

JAMES CADA: You could just be charged with attempted manslaughter. [LB1105]

SENATOR CHAMBERS: But I killed him. [LB1105]

JAMES CADA: Oh, you killed him. Well, you still could be charged with attempted manslaughter, Senator. You may not have intended to kill him. [LB1105]

SENATOR CHAMBERS: I intended to kill him. [LB1105]

JAMES CADA: Well, then you may not be eligible for the program because of the seriousness of the offense. [LB1105]

SENATOR CHAMBERS: That's what I need to know. What kind of offenses automatically would bring me to this court? [LB1105]

JAMES CADA: There would be a process of finding out about that veteran, whether they have PTSD, whether it came about because of their service, whether the issues that they have are treatable issues. So it wouldn't automatically put you in if you shoot Senator Lathrop. [LB1105]

SENATOR CHAMBERS: Would I be tried for what I had done or I'm excused from that? [LB1105]

JAMES CADA: If you get into the program and you complete the program successfully with whatever is involved, the treatment for the mental issues, the treatment for the abuse you probably would have, substance abuse, over a period of time, whatever period that is, whatever the court determines is the right amount of time, and if you are successful in your program, your community service, they will excuse you from that charge. [LB1105]

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SENATOR CHAMBERS: Why cannot I be put on trial in a regular court and my mental condition be a mitigating circumstance or find me not competent to stand trial? Why couldn't that happen in a regular court? [LB1105]

JAMES CADA: Well, I don't know why it couldn't. I don't do criminal law, Senator Chambers, so I'm not really familiar with those aspects of it. [LB1105]

SENATOR CHAMBERS: I'm asking for your opinion. Is it your opinion... [LB1105]

JAMES CADA: My opinion is that they should be able to be treated. The issue with veterans, because of our experience in combat and our knowledge of what goes on, we believe that the only way to help them is to have these balanced treatment programs to make sure that they get over the issues of PTSD, traumatic brain injury, and the depression that they're going through that results in the substance abuse. [LB1105]

SENATOR CHAMBERS: So first of all, the class or category of veterans who would be eligible to be in this court would be those who have been in combat, correct? [LB1105]

JAMES CADA: Generally that's true. In order to have posttraumatic stress, there has to be some event that causes that. There are other events that could cause that while you're in the military. What they might be I wouldn't be able to (inaudible). [LB1105]

SENATOR CHAMBERS: So only those with posttraumatic stress would be eligible to go to this court? [LB1105]

JAMES CADA: At the present time that is correct. [LB1105]

SENATOR CHAMBERS: And how many people are like that are estimated to be in Nebraska? [LB1105]

JAMES CADA: I think we have...I think Senator Ashford mentioned one time there are about 400 veterans in our prisons at the present time. Do they have PTSD? I don't know if they've been tested. I don't know if they are...have been to the VA where we currently test them. [LB1105]

SENATOR CHAMBERS: After they're treated, would they then stand trial? Or would it be as you've said, they're excused and not held accountable for what they did? [LB1105]

JAMES CADA: It's like probation and a process or...yes. [LB1105]

SENATOR CHAMBERS: And if they violate probation, do they go back to this court? [LB1105]

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JAMES CADA: To this court or to another court, yeah, to this court most likely because they're in front of that judge and... [LB1105]

SENATOR CHAMBERS: Would...if they went to another court, would that be the regular courts? [LB1105]

JAMES CADA: Yes, well, I would expect that, because they're in front of one judge, they're going to stay in front of that judge. You see, the process of these veteran courts are that they meet with the veterans in a veterans court on a weekly basis to make sure that they are... [LB1105]

SENATOR CHAMBERS: Excuse me one second. [LB1105]

JAMES CADA: Go ahead. [LB1105]

SENATOR CHAMBERS: Sorry. [LB1105]

JAMES CADA: Nope, that's all right. They meet on a very regular basis to make sure that they're following all the things that need to be done. They'll have a veteran mentor, will be a member of the VFW or the Am Vets or the DAV, Disabled American Veterans. They will have a...the county or the judicial treatment person, Tami Osburn, does that now for the federal government. She will be there. They will all...and they will have their probation officer or counselor there. There will be other veterans present to provide support for these veterans so that they can complete their program. They're watched very carefully and supervised very carefully. [LB1105]

SENATOR CHAMBERS: My next line of questioning, and it will not comprise a large number of questions, goes to how sincere people are who are bringing us this. What is being done by the groups and organizations and the state veterans association or the USVA, United States Veterans Administration, for those persons who are locked up in the penitentiary right now? What programs have they established of a formal nature to work with the penitentiary to help these men and women who are locked up right now? [LB1105]

JAMES CADA: Are you... [LB1105]

SENATOR CHAMBERS: Are there any such programs? [LB1105]

JAMES CADA: Are you talking about veterans? [LB1105]

SENATOR CHAMBERS: Yes. [LB1105]

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JAMES CADA: ...because veterans organizations do have affiliations within the prison system and they have regular meetings. [LB1105]

SENATOR CHAMBERS: No, I don't mean the veterans themselves, because if I'm sick and he's sick and we're both vets, we can't do much to help each other. The treatment, what kind of treatment do vets in the penitentiary in Nebraska receive for mental illness? [LB1105]

JAMES CADA: You know, and you would know that better than I would, Senator. I honestly don't... [LB1105]

SENATOR CHAMBERS: I shouldn't though because you all are the ones who want to set up this special court and you're the one who has the interest in the veterans. [LB1105]

JAMES CADA: We're trying to avoid going to prison so that we can treat them in the regular treatment process. [LB1105]

SENATOR CHAMBERS: That's the popular thing. Now I want to know about the situation that exists right now, men and women right now who are being denied mental health treatment in facilities run by the state, the county, or the city. Where are those organizations? You've said there are these kind of courts all over the country. [LB1105]

JAMES CADA: Correct. [LB1105]

SENATOR CHAMBERS: When it becomes popular, everybody jumps on the bandwagon. These veterans have been going to prison forever and I have never seen anything like this. I'm going to be honest. I think this is politically inspired, but that's...I'm letting you know and those who are going to testify that not everybody thinks that just because somebody was in the military that makes him or her unaccountable for what he or she did. It doesn't make that person automatically a hero. This is a nuanced issue and I'd be much more inclined to take this seriously if the ones bringing this and these organizations had shown that concern for veterans in the penitentiary right now. I'm not a therapist. I'm not a social worker. I'm not a psychiatrist, psychologist, or any of that. But I am a human being and I'm aware that there can be extenuating circumstances behind a person violating a criminal law. Ever since I've been in the Legislature I've been concerned about not just veterans but people who wind up in the penitentiary. There is not mental health treatment available for those men and women. So I'm hoping that now that you all have gotten this new vision you'll look at the ones who currently are locked up. They would be diagnosable as having mental illness but they would be misdiagnosed by the prison psychiatrist, this Dr. Scott Moore who works for the Department of Health and Human Services, as having behavioral problems and because of that they're not treatable; and since they misbehave they are security risks

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so they're thrown in the hole and that's the way they're dealt with. With that happening now and nobody who claims to be concerned about veterans is initiating formal action to do something about it just stokes the basic skepticism that I have developed through my many years in public service. I want everybody to get the treatment that they need. And lest you think that I'm attacking you personally, I don't have any other questions or comments that I'll make at this time. I'm just alerting you to the fact that we have people in need right now. Whether they get out on parole or not is not something you can control or anybody else. But if the prison system knows that they're being scrutinized by people on the outside who have what might be called credibility, then they might be encouraged to straighten up and fly right. But that's all that I have. Thank you. [LB1105]

JAMES CADA: Thank you. [LB1105]

SENATOR ASHFORD: Jim, let me follow up with what Senator Chambers asked because my understanding of veterans courts is a little bit different from what you enunciated. I've, you know, visited a couple of them, and the one in Minneapolis, for example, in Hennepin County, essentially it's a mental health court. But what it does is it has people on staff that deal with specific veterans-related mental illness, like posttraumatic stress syndrome. So what happens is, there, is that there is a...it's a diversion, diversionary court. It's an alternative to incarceration if it's determined that the person has these particular conditions. Not limited to one condition, it could be other mental health issues. I believe the Hennepin County Court limits itself to nonviolent offenses. It may have some other jurisdiction and then they go from there. But I...my understanding is that and having observed it is the individual offender is part of the process that I saw with the judge. It's a district judge, just like any other district, that is assigned to that court, and there is a probation officer at the hearing, at least the hearings I saw, and it...as you say, it was every month or every two or three weeks, two weeks, they bring this individual before the court again to just see how they're doing. Actually, my brother's court had...it...we have a young adult court in Douglas County and my brother...Pat Lamberty started. You know Pat. And then my brother Mark has had for a number of years and they have a...they've just increased their...the...he's increased that court from 25 to 50 people and that...some of it works in the same way. It's...it can include felonies. Obviously, it's a district court. It...the county attorney has quite some say in this because if the county doesn't agree to... [LB1105]

JAMES CADA: It won't happen. [LB1105]

SENATOR ASHFORD: It won't happen, and that's the way that it is up in Minneapolis as well. And so we don't...but I do...the point that you're making that is very important is that we do have drug courts. What we did and what we...we have community day reporting centers, community correction centers, that we have...it's drug and alcohol related and there are a couple thousand people within the system every...go through that system every year. It does not go into mental illness for anybody. [LB1105]

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JAMES CADA: That's right. [LB1105]

SENATOR ASHFORD: And that is a big problem because, to your point, we do...and to Senator Chambers' point, we do get people then in prison who have...quite a large number who have some mental illness in prison that those kinds of mental health interventions at the intervention stage, whether it's veterans related or otherwise, would have a profound impact, I think, on the number of people that go into the penal system. I normally don't make these little speeches, but I do get what you're saying and I think that...and I do agree the veterans have unique...as a group have unique problems and that do affect their employment. We had some testimony in Senator Lathrop's committee the other day about veteran employment issues and I believe the unemployment rate is 7 percent for veterans in Nebraska, which it's not...which is twice what the normal...and I...my guess is that there's probably some relationship to mental illness or mental health or behavioral mental health issues. So I...what you're saying is absolutely important. But where we are in Nebraska right now is we aren't...we're not there and we have to move...as Senator McGill said, we must move ourselves beyond drug and alcohol. Drug and alcohol is critical, but mental illness is being...we're in avoidance. We've been in avoidance and it's not anybody's fault. It's just, as a state, we've been in avoidance for a long, long time on mental illness and it does seep into the criminal justice system and we're seeing that in our prison reform efforts. So I've given you a long comment but I commend what you're doing. I just...that's just my experience in looking at these courts. [LB1105]

JAMES CADA: You only give me a few minutes to speak. Could I... [LB1105]

SENATOR ASHFORD: Yeah. [LB1105]

JAMES CADA: Could I address just the issue of the pretrial diversion? [LB1105]

SENATOR ASHFORD: No, go ahead. You can respond to... [LB1105]

JAMES CADA: The diversion issue in Lancaster County that I've been involved in with...for the last two years with the County Attorney Joe Kelly has been very successful. [LB1105]

SENATOR ASHFORD: Right. [LB1105]

JAMES CADA: We have these veterans coming to us who are in serious trouble with the law. We haven't taken any felonies, although we're considering that now and we think we will be taking some soon. [LB1105]

SENATOR ASHFORD: Well, you could take (Class) IVs, I would think. [LB1105]

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JAMES CADA: Right. I think so, too, and...but the point is that they've all been...they've been successful and we've gotten them through the program. [LB1105]

SENATOR ASHFORD: Right. [LB1105]

JAMES CADA: They are so thankful that they had the program and they're on the right path to...after their treatment and after care and it's such an important thing. [LB1105]

SENATOR ASHFORD: And their recidivism rate is, like, less than 10 percent or something. [LB1105]

JAMES CADA: Nothing. We have had none. We have had none. [LB1105]

SENATOR ASHFORD: Yeah. None. [LB1105]

JAMES CADA: Right. [LB1105]

SENATOR ASHFORD: None is good... [LB1105]

JAMES CADA: Right. [LB1105]

SENATOR ASHFORD: ...because then they're...yeah, Senator Seiler. I'm sorry to go on, Senator Seiler. I just... [LB1105]

SENATOR SEILER: No problem. You said you were an attorney. [LB1105]

JAMES CADA: I am. [LB1105]

SENATOR SEILER: And you practice in Nebraska. [LB1105]

JAMES CADA: I'm also a Vietnam veteran like you are. [LB1105]

SENATOR SEILER: Okay. Okay, Nebraska. [LB1105]

JAMES CADA: Yes. [LB1105]

SENATOR SEILER: And I support all these programs 100 percent. My problem is we're not getting them distributed. Adams County has a drug court. It's very successful. If I get arrested in Adams County I'm okay. I get to go to the drug court. If I'm in Hall County, I get to go to drug court. But let's take Adams, for instance. If I get arrested four miles east of Hastings, I'm in Clay County. Guess what? I've got the same judge but we don't have court, a drug court. My point is, we're getting the drug court, adult court, veterans

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courts, and all this, but we're not letting the judges use them. That same judge ought to be able to use that in Adams County, as well as Clay County. And what...we're molding these into little court fiefdoms and we need them all over the state. [LB1105]

JAMES CADA: Senator, I think one of the issues that I found at the seminar, the meeting we went to in Washington, D.C., is that the judges that are doing this really want to do it and they have a special respect for the veterans. I don't think every judge has that same respect. [LB1105]

SENATOR SEILER: I know. [LB1105]

JAMES CADA: I think it requires certain people... [LB1105]

SENATOR SEILER: I have enough faith in judges that they're going to do what the Supreme Court tells them to do. [LB1105]

JAMES CADA: Well, all right, then I'll have to get the Chief Justice to tell them what to do. [LB1105]

SENATOR SEILER: Right. [LB1105]

JAMES CADA: And you could probably do that, right? [LB1105]

SENATOR SEILER: And I agree and that's what I'm trying to get to. [LB1105]

JAMES CADA: Sure. [LB1105]

SENATOR SEILER: I think that you ought to spread your veterans and the drug courts out into these other counties with the same judge. You've got the same judge. [LB1105]

JAMES CADA: And we've tried through the bar association to get the county attorneys in every county to set up a diversion program so that we can start this program at a lower level and then move it into the courts. It takes a lot of effort. There aren't a lot of veterans out, probably, in Adams County. I don't know. [LB1105]

SENATOR SEILER: Yeah, there is. [LB1105]

JAMES CADA: And if they get in trouble, then we'd like to help them; and we've got to get the county attorney to jump in on that program and then it'll fly. [LB1105]

SENATOR SEILER: Okay. But that's where I'd like you to go. [LB1105]

JAMES CADA: We have a good way to do it and we're willing to help anybody get

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started because Mr. Kelly in Lincoln has done an excellent job of setting it up for us. [LB1105]

SENATOR SEILER: Yeah, and that's my point. I think you're setting them up in Omaha and Lincoln and a few places out west, but we're not getting the rest of the state. And if Al Davis was here, from the western end of the state, I'm sure he'd be hollering and jumping up and down and wanting you to come out there too. [LB1105]

JAMES CADA: I want them...we want...as a... [LB1105]

SENATOR SEILER: I know you do. I know you do. [LB1105]

SENATOR ASHFORD: He's on board, I think. [LB1105]

JAMES CADA: Yeah, I totally want it to happen. [LB1105]

SENATOR ASHFORD: And just as an additional point, I think that in LB907, I mean, we're still, the committee...not still. The committee is going through that bill and will be for another week or so or maybe more, but part of it is to try to focus funding on problem-solving courts so that, you know, we...I think the chief has expressed to me on many occasions...I know he told Mark to...gave him the authority to go from 20...not that he needed, necessarily, the authority, but encouraged him to go from 25 to 50 young adult court participants. That's a two-year program for each one. But if we provide sufficient probation officers throughout the state and say in the, you know, in the bill that this...these particular probation officers should be skilled and working on things like posttraumatic stress syndrome, it's going to happen from that level up. Then the Supreme Court can say, hey, we've got...and the good thing is that our probation officers are statewide. In Minnesota, for example, they're county by county. So we're unique. I don't know if we're the only ones, but having a state probation system, if we get funding there to have them look more at mental health issues and have this...have the chief, you know, encourage the judges to do it, to Senator Seiler's point, that should really...that should boost this, it would seem to me. [LB1105]

JAMES CADA: I hope so. [LB1105]

SENATOR ASHFORD: Yeah. [LB1105]

JAMES CADA: I hope so, Senator. [LB1105]

SENATOR ASHFORD: Thanks, Jim. [LB1105]

JAMES CADA: You're welcome. [LB1105]

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SENATOR ASHFORD: Yeah. Okay, John. No. (Laugh) God, I just want to hear from Hilgert. [LB1105]

SENATOR SEILER: (Laugh) I was going to say, what's going on here? [LB1105]

SENATOR ASHFORD: I don't know. I mean, I just want to see if he's still got it, you know, after all these years. (Laugh) No. I'm sorry. Go ahead. [LB1105]

THOMAS WAGONER: Chairman Ashford, members of the Judiciary Committee, good afternoon. My name is Thomas Wagoner, Jr., W-a-g-o-n-e-r. I recently retired from the United States Marine Corps after 24 years of service and returned to Nebraska where I was raised. I'm also an attorney and a member of the military law section of the bar, although I'm speaking here in my individual capacity, as Jim is speaking for the bar association officially. I'll try to get past some of these things quickly that you discussed, but thank you for allowing me to speak on behalf of LB1105. While I currently do not practice in the Nebraska courts, I have been a Nebraska Bar attorney for 17 years and have been a judge advocate in the Marine Corps for that same amount of time and have experience on both the prosecutorial and defense sides. I've deployed to four different war zones and while I'm an infantry officer I have seen what combat can do to our service members. The vast, vast majority of these service members and veterans who get into trouble are basically good people that run into a problem, run off the rails, had a bad night, more times than not relating to drug or alcohol problem. The difference is the military can kick them out. It's simple as you miss work for a couple days, they can take you to court, they can discharge you, and you're gone. The state of Nebraska doesn't have that option and societywise I feel the veterans courts are an answer to some of these problems. I personally believe that 1 percent of Americans who volunteer to serve and defend the 99 percent deserve a privilege to be heard by judges and courts who understand their culture and unique history. These courts would be a positive affirmation for the state of Nebraska that they support their troops. While slogans, random thanks, and yellow car magnets are appreciated, court actions, especially actions aimed at helping those most in need, would speak loudly to that. America, including Nebraska, has been very supportive of creating programs and laws, quite frankly, for wounded warriors, as they should. Those who have served and get in trouble, however, do not garner anything close to that support and yet many of them do have undiagnosed injuries, such as TBI, that we've discussed, and PTSD. I think that is another issue that we've seen is the fact that many of the problems and one of the concerns I think we have is to open the aperture on who can get into these courts because many of our service members are undiagnosed when they leave, so that is a problem. I don't believe these courts are a panacea to all our problems, but I believe they can address many of them. Many of our troops are leaving...when they come and they leave the military they've had a very regimented lifestyle with many, many people they report to every day. They come out to the civilian world and that's gone. I believe these courts can, in essence, be a safety net to stop them from falling into that abyss

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that is long-term unemployment, homelessness, violence, and potentially suicide. I'd like to publicly commend Lincoln...Lancaster County Courts and Lincoln Community Foundation for their support so far, but I do believe at this time we need to act boldly and decisively to move a new program forward. The fact remains, we do need to open that aperture to allow more veterans and service members access to these courts or, at a minimum, a diversion program. The current restrictions, while understandable, effectively deny the majority of veterans who run afoul of the law entry into the current diversion program. Offenses like DUI, reckless driving, and assaults are really the gateway offenses into our system, yet they are not allowed to be seen in the current diversion program. And I'm sorry if I'm boring you. [LB1105]

SENATOR ASHFORD: No, it's...I mean, the...you're absolutely right. And I think the way to get there is through these alternatives to incarceration through alternative courts or problem-solving courts, and the way to get there is to legislatively fund programs for probation officers so they fully understand what these...this mental illness entails or these other circumstances are so that the Supreme Court then can pick up the ball and push these...well, encourage these judges or whatever, however the chief does it, to get these courts set up across the state, as Senator Seiler suggested. I think we're almost there, but we need more probation officers and we need them trained in this area. We're on the cusp of this because it's a big part of the prison reform effort and so, I mean, you're...this is...you're not talking...this committee is very aware of what you're talking about. Thanks, Tom. [LB1105]

THOMAS WAGONER: Clearly, funding speaks, Senator. [LB1105]

SENATOR ASHFORD: Yeah. [LB1105]

THOMAS WAGONER: And I know that the mentors in the group, the DAVs, they're also a critical part of that with those holistic teams that take care of these veterans that get in trouble. [LB1105]

SENATOR ASHFORD: Right. Thank you. [LB1105]

THOMAS WAGONER: Thank you. [LB1105]

SENATOR ASHFORD: Phew. [LB1105]

JOHN HILGERT: (Laugh) Finally. Senator Ashford, members of the committee, my name is John Hilgert, J-o-h-n H-i-l-g-e-r-t. I serve the state as the director of the State Department of Veterans Affairs. I also serve as the division director of the Division of Veterans' Homes for the Department of Health and Human Services, and I am here to testify in favor of LB1105. I won't go over many of what was said. But I will make a few observations in support of this bill. One, I don't believe that every veteran necessarily

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is...deserves this because they are a hero. I believe they deserve this because they've served. This is recognition of service. If not for the service to our nation, they would not be making the poor choices, whether they're lifestyle choices that have manifested in criminal or criminal choices itself, and that's the recognition of the state. That's what we're trying to produce. Not all combat veterans have PTSD. I think female veterans and male veterans who have undergone sexual trauma, be it in the field, be it in training, deserve the recognition that they've served our nation and have been affected by it. So it's not just combat veterans that would be deserving of these veterans courts. Also, the comment was made that they would return to the same judge. They return to the same judge so the judge sees that there has been a failure, that there has been some need, some hurdle not met, some requirement not met. And then that judge could then accordingly choose the next step in the course of action. I don't have a specific vision of what veterans courts are, but we do support this bill and the statewide effort. I think that's very important. I think that's why this is a good bill and it's appropriate. But I also believe that our judiciary should be granted the maximum latitude in recognizing the service, recognizing what...the challenges for the veteran and to get that veteran the service. I'm here because the Supreme Court can collaborate with my department to seek out the services that exist provided by the state, provided by our federal partners, and working in conjunction with our counties as well. And we would be excited to do it, we'd be prepared to do it, and we would help in any way we possibly could. The fiscal note reflects a small addition of our capacity in order to meet that need should the Supreme Court take advantage of that. [LB1105]

SENATOR ASHFORD: Well, I think the vision is pretty clear, John. [LB1105]

JOHN HILGERT: Yeah. [LB1105]

SENATOR ASHFORD: I mean, I think you have to have judges and probation officers that are trained, and yet there have to be sufficient numbers of them so that they can actively engage because the judge does have to monitor in order for it to be effective. [LB1105]

JOHN HILGERT: That's right. [LB1105]

SENATOR ASHFORD: The judge has to monitor and have graduated ability to deal with the problems. So I think you can do it. [LB1105]

JOHN HILGERT: You know, and it is popular, it is new, and it is sweeping the nation, and it's the right thing to do and it... [LB1105]

SENATOR ASHFORD: And people are...and it's not just...I mean, there are... [LB1105]

JOHN HILGERT: Yeah. [LB1105]

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SENATOR ASHFORD: There are a lots of mental illness-related crimes that are committed that are...can be addressed in this manner as well. So we're dealing with an awareness of mental illness generally and specifically those kinds of conditions that veterans face but... [LB1105]

JOHN HILGERT: And this Legislature and our Governor took that step last year when you passed LB93. We're going to start July 1 to self-identify on your driver's license that you're a veteran. [LB1105]

SENATOR ASHFORD: Yeah. [LB1105]

JOHN HILGERT: And it's not just to get the discount at the Home Depot or wherever. [LB1105]

SENATOR ASHFORD: No, this is a serious thing. I mean, this...these things work because recidivism goes way down when you go through them. So anyway, okay, thanks. Thanks, John. [LB1105]

JOHN HILGERT: Thank you, Senator. [LB1105]

SENATOR ASHFORD: Next...yes, sir. [LB1105]

GREG HOLLOWAY: My name is Greg Holloway, G-r-e-g, last name H-o-l-l-o-w-a-y. I'm 100 percent service-connected disabled veteran, actually, with PTSD, and I meet, actually, the criteria of this bill because I have a severe head injury. I'm service connected for what's called organic brain syndrome as a result of shrapnel wounds to the back of my head in combat. So I meet the qualifications to be up here sitting probably that far from it. I keep Jim's phone number on my speed dial. (Laughter) And...but this is not unlike...in the early 1960s Lancaster County realized the need to set up a separate juvenile court. I think they probably mirrored the separate juvenile courts they set up in Douglas County. I have a good working knowledge of those separate juvenile courts from the '60s, trust me. Judge Nuernberger and I got to know each other pretty well. But because Judge Nuernberger as a separate juvenile court understood what needed to be done to the youth to give them the opportunity to graduate up and make a difference, actually, I ended up being nominated by a...I was on the nomination reports for the juvenile courts of Lancaster County and helped pick the last judge, Judge Porter. And I went up before the judge when I was 15-16 years old so it works. I represent the Disabled American Veterans. I'm past department commander for the Disabled American Veterans. I'm past state council president for the Vietnam Veterans of America. And I represent the Nebraska Veterans Council also. We all think this should happen, and I wish Senator Chambers was here so I could address some of the issues about taking...looking after the care of the inmates in the prison system now

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because the Vietnam Veterans of America has worked very hard to try to look after the veterans, incarcerated veterans. There's a lot of stumbling blocks when you work with the Department of Corrections to be able to go in there and look after them and take care of them, but we're giving it our best shot. [LB1105]

SENATOR ASHFORD: Well, hopefully we can enable that a little bit so it'll be easier to do. [LB1105]

GREG HOLLOWAY: I think so. [LB1105]

SENATOR ASHFORD: Yeah. [LB1105]

GREG HOLLOWAY: And it's the understanding, being able to work with the veterans. This is a good bill. I'm not just supporting it because Jim is my friend and John is my friend. We're supporting it because this is what we need to do to look after the veterans that served our country admirably and need some help. I'll answer any question you got. [LB1105]

SENATOR ASHFORD: Good. Great. Good...those are good comments and if we don't have questions it's not a reflection on the importance of your testimony. [LB1105]

GREG HOLLOWAY: That's fine, that's fine. I'm okay. There...this be a wonder that I'm leaving before the red light comes up. [LB1105]

SENATOR ASHFORD: Yeah, you don't even have a red light but... [LB1105]

GREG HOLLOWAY: Yeah, I don't have a red light and I'm leaving so that's a plus for me... [LB1105]

SENATOR ASHFORD: But you get points for that and that's good. [LB1105]

GREG HOLLOWAY: ...because they...usually people give me what I want just to shut me up. [LB1105]

SENATOR ASHFORD: Oh. Okay. [LB1105]

GREG HOLLOWAY: So thank you for your... [LB1105]

SENATOR ASHFORD: Thank you for your... [LB1105]

GREG HOLLOWAY: ...for the effort and get this out... [LB1105]

SENATOR ASHFORD: Thanks for... [LB1105]

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GREG HOLLOWAY: ...so we can at least vote on it. [LB1105]

SENATOR ASHFORD: Thanks for what you do. [LB1105]

GREG HOLLOWAY: You bet. You bet. [LB1105]

SENATOR ASHFORD: Well, we'll see something. You'll see something on this probably. Okay. Next proponent. Any opponents? Neutral? [LB1105]

AMY MILLER: (Exhibit 15) Good afternoon. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. ACLU of Nebraska is providing neutral testimony for this bill. We're neutral because we do agree with the goals of the bill. We think that problem-solving courts, such as veterans courts, are incredibly important to provide people who have mental health issues or substance abuse problems to get the attention and care they need; and we always support anything that will lower our massive prison population and keep offenders with their families with alternatives to incarceration. The reason that we are neutral and that we cannot fully support it, however, is that it is limited to veterans. Thirty states have veterans courts, and all 30 states also have mental health courts so that it is not just limited to someone who has served their country in the military service, that these sort of diversion programs are available to people based on their needs or based on the nature of their offense. We've proposed, for example, the hypothetical of the service member who served in the military with no combat experience but does develop a substance abuse problem. Upon his offense, he would be eligible to go into the veterans court. But a police officer who has never served in the military but has developed PTSD because he was shot on the job and then got addicted to painkillers to deal with the issue and then commits a crime has also served his community and his country, and the former police officer would have no availability for these sorts of advantages that come with the diversion programs. This raises a concern about an equal protection problem of treating two people who have the same diagnosis or the same circumstances of crime differently solely on the basis of veterans status. So we do not want to see these benefits limited to veterans. We've already had a pretty vibrant discussion about an expansive view. We would urge additional conversations around creating generic mental health courts alongside veterans courts to make these opportunities available to everyone. Thank you. [LB1105]

SENATOR LATHROP: Very good. Any questions for Amy? I see none. Thank you for your testimony. Anyone else here in a neutral capacity? [LB1105]

SCOTT CARLSON: (Exhibit 13) Good afternoon. Scott Carlson, S-c-o-t-t C-a-r-l-s-o-n. I'm the statewide coordinator of problem-solving courts with the Administrative Office of the Courts. As Senator McGill indicated, I submitted a letter to the committee in advance of this hearing and I would welcome any questions now that Senator Ashford is

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gone. [LB1105]

SENATOR LATHROP: You have no...that's your testimony? [LB1105]

SCOTT CARLSON: Correct, in lieu of testimony I submitted a letter. [LB1105]

SENATOR LATHROP: Okay. Very good. Any questions for Scott? I see none. Thank you for what you do. [LB1105]

SCOTT CARLSON: Thank you. [LB1105]

SENATOR LATHROP: Anyone else here in a neutral capacity? Okay. Senator McGill to close. [LB1105]

SENATOR MCGILL: Just quickly, to close, I would love to see mental health courts as well; in fact, originally I thought that was going to be an explicit part of the package that Senator Ashford was going to introduce this year. And so I took on the veteran courts issues separately, thinking that was going to be a part of a larger discussion and hope that we can move those forward either this year or in future years. [LB1105]

SENATOR LATHROP: Thanks. [LB1105]

SENATOR MCGILL: All right. [LB1105]

SENATOR LATHROP: We should thank all those who came down here today to testify. [LB1105]

SENATOR MCGILL: Yes. [LB1105]

SENATOR LATHROP: I appreciate the support, and not just to those who served, but those who serve those who have served. So thanks, Jim and everyone else. [LB1105]

SENATOR MCGILL: They've done a great job and really they've...in Lancaster County we have the opportunity to replicate something that's working in other parts of the state so I hope we can learn from them and move forward. [LB1105]

SENATOR LATHROP: Very good. Thanks, guys. Senator McGill has the next bill so she will not be getting up. (See also Exhibits 8-12, 14, and 25.) [LB1105]

SENATOR MCGILL: Yes, I do. [LB1105]

SENATOR LATHROP: We'll allow people to move about if they need to. [LB1105]

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SENATOR MCGILL: All right, I'll go ahead and get started. I am still state Senator Amanda McGill, introducing LB1034 for your consideration. This bill would add a new offense under unlawful intrusion. This legislation targets an act outlined in the bill that has become more prevalent with advances in technology and is known as "upskirting," so using your phone to videotape or take pictures under a woman's skirt while standing in line to buy tickets at a movie theater or something like that. When this bill was brought to my attention, I felt compelled to introduce legislation to help address it. I was made aware of a case in Cass County where the county attorney found it difficult to prosecute an individual who snaps photos of a person's intimate area that is not otherwise visible. LB1034 seeks to address a gap in the unlawful intrusion statutes that hinders the ability to prosecute those actors for the crime they are committing. There is a testifier after me who can go into greater detail on that case that prompted this bill and give other examples. On a personal level, I feel that our laws need to catch up with technology when it comes to this type of violation of privacy. Thank you and I would be happy to try to answer any questions, but there will be attorneys after me. [LB1034]

SENATOR SEILER: I thought this was called the "Erin Andrews" bill. [LB1034]

SENATOR MCGILL: Or...(laugh) yeah. And she was at least in a hotel room, you know, where there was a reasonable expectation of privacy, I mean. But when you're out in public and standing in line at McDonald's or something and a person does this to you, right now the law is not clear. [LB1034]

SENATOR LATHROP: Okay. Senator Coash has a concern. [LB1034]

SENATOR COASH: Thank you, Senator Lathrop. And maybe somebody will answer this: It seems to me that, you know, somebody does this, it is a violation. What did the Sarpy County judge say was so unclear that... [LB1034]

SENATOR MCGILL: Well, it's not a place of...if you're out in public, in line, it's not a place where you're expected to have privacy, like in your own home, in a hotel room. You're in a public place, but you're at the same time not expecting someone to look up your skirt,... [LB1034]

SENATOR COASH: Okay. [LB1034]

SENATOR MCGILL: ...you know, and take a picture of it. [LB1034]

SENATOR COASH: I understand. [LB1034]

SENATOR MCGILL: So they'll be able to talk a little bit more about that. All right? [LB1034]

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SENATOR SEILER: That's almost incredible. [LB1034]

SENATOR COASH: All right. Thank you, Senator. [LB1034]

SENATOR LATHROP: This...you know, when I heard about this, I thought it was just some kind of a frat prank and these guys would take a picture and then talk about how they've got a picture. Apparently, they're uploading them or downloading them, whatever the correct term is, onto the Internet and sharing them with other people and making them public and that's...just makes the problem even that much more horrific. [LB1034]

SENATOR MCGILL: Yes, um-hum. [LB1034]

SENATOR LATHROP: Okay. I think that's all the questions or comments or concerns so we'll go to the first proponent. [LB1034]

JON EDWARDS: (Exhibits 16-19) Good afternoon, committee members. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I appear here today as a registered lobbyist for the Nebraska County Attorneys Association, here in support of LB1034. And first of all, I'd like to certainly thank Senator McGill for bringing this on behalf of the association. We appreciate her stepping up on this particular issue. I also need to apologize. We did plan to have Cass County Chief Deputy Attorney here to talk specifically about the case that he's dealing with, but given the weather he made the determination this morning he couldn't get over here. So you have me. So what I'll try to do is just briefly make a few comments about the bill and...as the limited knowledge that I have as related to the case that kind of prompted this bill to be brought forward. First of all, the...and you're getting a few things handed out to you. One will be the Cass County Attorney's testimony that he was going to provide. There's a couple of articles in there as related to this issue, and there's also a picture in there of the activity actually taking place in...I believe it's in the Cass County case that we're attempting to try to deal with here. This bill deals with the activity commonly called "upskirting," this act of filming or photographing an individual's private areas without the knowledge or permission of the individual that is being filmed or photographed, and this typically happens in public situations. Currently, prosecutors are trying to prosecute these cases under the current unlawful intrusion statutes, and one of the things that deputy county attorney had indicated is in current law as it currently stands the statute focuses on criminalizing the filming or photographing of a victim in a place of solitude where a person intends to be in a state of undress, such as a dressing room or a tanning booth or something like that. These cases are typically going to be in a public setting. In that case in Cass County, and I believe there's also been another case that they've tried to deal with in Lancaster County as well, in the Cass County case there's been at least one judicial ruling of finding that this kind of behavior described did not violate any law. And this addition, the addition to the statute, would clearly articulate this activity is a violation of law. And just

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quickly, if I could speak directly to the bill and the language we're trying to provide for here, in Section 1, subpart (2) of page 2 of LB1034, first, LB1034 attempts to, in statute, within the current unlawful intrusion statutes, as clearly as possible define the activity we are referring to here, the actual photographing, filming, recording, and/or broadcasting of images of the intimate areas of other persons in public without the knowledge and consent of the person that is subject to the activity described. And then secondly, quickly, it also then goes on to define "intimate area" for purposes of the above-described activity, and that is outlined in subpart (3)(a) of Section 1 of the bill. [LB1034]

SENATOR LATHROP: Okay. Thanks, Jon. Any questions regarding this? Okay. I don't see any. Thanks. [LB1034]

JON EDWARDS: Thanks. [LB1034]

SENATOR ASHFORD: Next proponent. Next opponent. First opponent. Amy. You know, I'm sorry about your dad. I never mentioned that to you. [LB1034]

AMY MILLER: Oh. Thank you. [LB1034]

SENATOR ASHFORD: Great guy... [LB1034]

AMY MILLER: He was, yes. [LB1034]

SENATOR ASHFORD: ...and a wonderful lawyer. [LB1034]

AMY MILLER: I appreciate it. It's...I still find myself wanting to call him and say, oh, I'm getting ready to testify on a bill...oh, I can't. So it has been a hard couple of months. [LB1034]

SENATOR ASHFORD: He was sort of a...he was a Damon Runyon character. [LB1034]

AMY MILLER: He was. [LB1034]

SENATOR ASHFORD: Yeah. [LB1034]

AMY MILLER: Am I? [LB1034]

SENATOR ASHFORD: Well, I'm not...I didn't go there. I was just speaking...(laughter) [LB1034]

AMY MILLER: Okay. [LB1034]

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SENATOR ASHFORD: Anyway,... [LB1034]

AMY MILLER: I'd take it. [LB1034]

SENATOR ASHFORD: Anyway,... [LB1034]

AMY MILLER: (Exhibit 20) For the record my name is Amy Miller. It's A-m-y M-i-l-l-e-r. And ACLU of Nebraska opposes those portions of LB1034 that criminalize not the slang of "upskirting" but the slang of "revenge porn." I feel as if I've had to get... [LB1034]

SENATOR LATHROP: I'm sorry. I didn't hear that last part. [LB1034]

AMY MILLER: Revenge porn. [LB1034]

SENATOR LATHROP: Revenge porn? Porn? [LB1034]

AMY MILLER: Yes, so let's talk about slang. We are...we support the decision to protect privacy of women who are experiencing the "upskirting" phenomenon that Senator McGill described. What we're concerned about is there is also another social phenomenon known as "revenge porn" where when a couple has been in a relationship and voluntarily taken or exchanged intimate photos of each other and the relationship ends, one member of the relationship continues to share or show that photo that was taken back when they were together. We're concerned that the description that refers to not just taking the picture without knowledge but broadcasting it without consent could penalize the ex who is using the revenge porn, which is also a very foul thing for one person to do to another but we don't think should be subject to criminal penalties. Our proposition outlined on the first page is that if you removed the broadcasting portion, that would still allow you to penalize people who unknowingly take these pictures and would address the "upskirting" phenomenon without reaching to the private dispute when I have, quote, broadcast the photo of my ex-boyfriend, I'm still showing it around to people. We do have a concern, even with the "upskirting," how to define the broadcasting portion because, as mentioned, if it gets uploaded to a Web site and I look at it and then I send an e-mail to a friend saying, this is odd, have I also participated? Because I did not have the "upskirt" victim's consent, have I also subjected myself to prosecution? By removing broadcasting entirely, it would solve these issues that we are concerned about. There is also the concern, as described on page 2, that there's no exception for newsworthy, public-interest exception. Think about Anthony Weiner. He voluntarily took intimate photos of himself and sent them to women who then, without his consent, shared them with the news. Clearly, it was newsworthy, but a woman who had shared Anthony Weiner's intimate pictures could be prosecuted under LB1034 as it's currently written. We've outlined at the very end that we also think that strengthening the civil remedies available to address the disgusting problem of revenge porn, strengthening our intentional infliction of emotional distress tort or other torts that are

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available to make sure that if there was any intention to address the...not the "upskirting" but the revenge porn concept, that we drive away from criminal justice solutions for what is a private dispute. [LB1034]

SENATOR ASHFORD: Senator Lathrop, do you have something to say? [LB1034]

SENATOR LATHROP: You know, maybe the...I get calls all the time for assault. People want to sue somebody else for a fight they were in, in a bar or something. And invariably, somebody that's going to engage in that activity has nothing. So a civil remedy is...people that do that stuff run around and they, because they have nothing, the civil tort system isn't a deterrent to them, in my opinion; and secondly, I think when you talk about revenge porn, as you've described it, boy, I don't have any problem criminalizing that. I mean, I think people, if they exchange those pictures, it's with some understanding that they're not going to be shared. I'm struggling with your testimony today and I generally see your point and today I'm struggling. [LB1034]

AMY MILLER: I absolutely understand that and, as this committee well knows, the problem of working for the ACLU often requires me to stand up in public and defend some of the most foul and unpleasant speech or First Amendment conduct that's possible. [LB1034]

SENATOR LATHROP: Yeah but sending...okay. [LB1034]

AMY MILLER: And I guess the question and the legal scholars...because bills that would specifically go to revenge porn have been introduced throughout the country and are being debated as we speak, and most of the legal scholarship that's coming down is talking about the fact that a freely shared image of myself, once given to you, is yours to do with as you wish. Now none of these...these bills are all so new they have not yet gotten the test of the courts so you...I could only assure you that the legal scholars are suggesting there's a deep problem with criminalizing this. [LB1034]

SENATOR LATHROP: Don't you think people share those with some kind of an implied understanding that they won't be further shared with someone else? [LB1034]

AMY MILLER: I suppose that's the difficulty of the private arrangement, isn't it, that any time that you have a private couple that is now fighting, do we want, as part of the private dispute between those two people, one person to sit in prison for a year? The penalty here is the Class I misdemeanor which carries a year's imprisonment and then under this bill would require registration as a sex offender for 15 years. And as this committee well knows, the housing and employment barriers that come with being a registered sex offender for... [LB1034]

SENATOR LATHROP: That's different. The degree to which one is penalized is different

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than...different question than whether it should be a criminal activity. And maybe...what maybe your answer is, is we ought to ratchet it down in terms of its class of misdemeanor and not subject somebody to either being a...on the registry or being...spending a year in jail. But somebody who shares a picture, and I can say all that's happening with a younger generation than me, that that's generally something people do and I think it's with the expectation that it'll be destroyed or certainly not shared with anybody. And we dealt...you know, we did this with "sexting" three years ago where we had to deal with this issue about kids. And apparently it's a thing for teenagers now to be sharing these pictures and I think we did not criminalize the actual sharing. But it's the broadcasting after they share it with their, you know, their boyfriend or girlfriend or whatever it is. But beyond that, then I think they are violating some understanding that one has when they send it. But certainly we can criminalize it if we want. [LB1034]

AMY MILLER: We agree with you that it is violating some inner sense, but we think that that's a civil problem not a criminal problem. I will say that the ACLU of California came to a compromise that was a more grudging position. But as mentioned at the top of page 2, you could include an intent requirement--the language that was used in California was broadcast "with the intent to cause (substantial) emotional distress"--to get to the revenge porn problem because I think essentially what we are concerned about is someone has an intimate photo of me,... [LB1034]

SENATOR LATHROP: Well, it could be done completely thoughtlessly. If I am a completely thoughtless person and I don't really care whether the ex-girlfriend is going to be hurt or not, I'm not doing it to hurt her but I'm just getting drunk with a bunch of my buddies over at the frat house and I start showing the picture around and forwarding it to them or putting it on Facebook or whatever it is, what does intent have to do with it, because then the guy has to be caring enough to intend the injury and he could be a complete slob that just doesn't care about the consequences. [LB1034]

AMY MILLER: I think that is why this is such a messy area to be wading into... [LB1034]

SENATOR LATHROP: It's messy. [LB1034]

AMY MILLER: ...because it is almost more a divorce court, family court, family law problem than it is one for the criminal justice system. [LB1034]

SENATOR LATHROP: Boy, I'll tell you what, it wouldn't be if it was my daughter. I would have a huge problem with somebody passing that along, especially if the relationship is over and they think it's funny. [LB1034]

AMY MILLER: That's why I would encourage you to sue him for a million dollars and to make sure that you garnished his wages... [LB1034]

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SENATOR LATHROP: And that will be the grandest waste of my time, period. [LB1034]

AMY MILLER: I think it is a harder waste of time to put someone behind bars because that same man who was so thoughtless in a drunken bar situation to pass around a picture of his ex-wife that she voluntarily agreed to pose for and knew that he had on his phone but they've split up now, I don't know that the criminal justice system's expenditure of resources on him is going to reform his behavior any more. [LB1034]

SENATOR LATHROP: We have a lot of things that are against the law that we don't send people to jail for and...anyway, I'm done taking up the committee's time. [LB1034]

SENATOR ASHFORD: Senator Davis. [LB1034]

SENATOR DAVIS: I just have a tendency to agree with you in general. But here would be my question: So a girl get...guy takes a girl out and she gets drunk and...really drunk. He takes this picture. Is that public permission? [LB1034]

AMY MILLER: That's a good question. Since the current language at least talks about without knowledge or consent, I think that she could very easily argue that, I wasn't consenting if I was too intoxicated or I was passed out when he took the pictures. [LB1034]

SENATOR DAVIS: I was too drunk? I was too drunk? [LB1034]

AMY MILLER: And so I want to make clear: The purpose, as Senator McGill talked about with "upskirting," the bill absolutely should prohibit that and should criminalize that sort of behavior. I am concerned that, as currently drafted, it could reach these larger issues. Senator Lathrop, what I hear you saying is, fine, let's reach those larger issues; and what we're proposing is if you want to at this point outlaw and make it clear that "upskirting" is illegal, to tighten the language, and that revenge porn could be covered another day, because at least what I'm hearing Senator McGill say is her intent was not to reach those larger issues and that that might be a fight for another day. [LB1034]

SENATOR DAVIS: How do you feel about the penalties? [LB1034]

AMY MILLER: At this point, for "upskirting," calling that a misdemeanor seems appropriate. Still have, even in the "upskirting" context,...I mean, the ACLU is fundamentally opposed to the sex offender registry as an ongoing, unnecessary burden. Even though this is at the lowest level of sex offender registry, it still would require the State Patrol to do the initial assessment and the offender would have to be registered for 15 years. That means every year the offender has to go back to his or her local law enforcement every time they move, every time they change an address. These are

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societal resources that do not seem necessary for the very crass act of taking a picture of...up from underneath someone's skirt. So at least as to "upskirting," we would support the penalty of the Class I misdemeanor, but we would still oppose the proposal that it be considered a sex offense. [LB1034]

SENATOR LATHROP: Are you done? [LB1034]

SENATOR DAVIS: Subsequent violation of this section involves an intrusion as defined in subdivision (3)(b)(i) of this violation (sic--section), which makes it a Class IV felony, so I guess that would be a second offense. Are you comfortable with that? [LB1034]

AMY MILLER: I believe we are. I hadn't even started to think in depth about that secondary offense. It is incredibly offensive to the right of the individual to have her privacy and to have that violated. [LB1034]

SENATOR DAVIS: I totally understand. I just... [LB1034]

AMY MILLER: Yes. [LB1034]

SENATOR DAVIS: We've been talking about prison situations here, you know, just something to think about. [LB1034]

AMY MILLER: Yes. [LB1034]

SENATOR LATHROP: You know what, maybe what troubles me is you're talking about whether it's a good use of the state's resources, and that isn't really what I expect from the ACLU. I'm not going to give you...I'm not trying to give you a lecture. But usually when the ACLU comes in and they say, you know what, the Nazis ought to be able to goose-step through Skokie, Illinois, and that's because we believe in protecting their right to free speech, but today it isn't so much about somebody's right to do something that's protected by the constitution or the Bill of Rights, but it's about whether it's a good use of the state's resources and that seems to be a little bit like the...not the kind of an argument I'd expect from the ACLU, and that may be why I'm...why I feel a little dizzy while you're testifying. [LB1034]

AMY MILLER: It may also be in part...it may in part also be because I'm incoherent on such short time frame. [LB1034]

SENATOR LATHROP: Okay. [LB1034]

AMY MILLER: I'm afraid that, and I should enunciate it, it's a, I understand, going to be a deeply unpopular position, but again it's not the ACLU's position alone. We're seeing this from legal scholarship. It's coming out around this issue, again, with no court

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decisions yet. The person who has received a photo of me in an intimate situation that I allowed him to take is a deeply unfortunate person who has that photo. But once I have allowed him to have that photo, it is his photo. And so our position and the legal position of the scholars who were looking at that, if I then choose to share a photo that I have of someone, that's my free speech right. I just shifted that I was the victim to I was the photographer. The person who has legally, consensually received a photo has a right to share that. That is an incredibly difficult position for the woman who voluntarily submitted to the photo and does not... [LB1034]

SENATOR LATHROP: I think it misses that it's a qualified gift of some kind. It's not a free...yeah, there's a tail on that gift of some kind, and I don't know how a lawyer would describe that or a legal scholar, but a conditional gift. [LB1034]

AMY MILLER: That is why at least, when we look at the tort that exists out there for when this happens, we think that tightening Nebraska, strengthening Nebraska's civil remedies would help. But if you look to how the Nebraska Supreme Court has defined intentional infliction of emotional distress, intentional or reckless conduct that is so outrageous in character that it has caused emotional distress. The law has already built up a remedy to take care of that. And I understand what you're saying, that some people do not have resources, but that's true of the man who sexually assaults me. I can't sue him if he doesn't have money either, but the law has provided... [LB1034]

SENATOR LATHROP: You can put him in jail. [LB1034]

AMY MILLER: In that situation there has been an offense against society. And I guess fundamentally the question is whether or not when two people who were together have split up, does society have a dog in that fight? [LB1034]

SENATOR LATHROP: Okay. Thanks. [LB1034]

AMY MILLER: Bottom line, we do thank Senator McGill for bringing this in the "upskirt" context. Did I make that clear? [LB1034]

SENATOR ASHFORD: Yes. Thank you, Amy. [LB1034]

AMY MILLER: Thank you. [LB1034]

SENATOR ASHFORD: Anybody else want to talk about this bill? Let's see, anybody else opposed? [LB1034]

SENATOR MCGILL: I'll close real quick. [LB1034]

SENATOR ASHFORD: Okay. [LB1034]

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SENATOR MCGILL: I...thank you all for that great discussion. I knew this bill would...was...after having read it and contemplated, I knew there would be some additional concerns, and I'm happy to clarify if there are ways to do that. I just personally, listening to this discussion, feel that even between a couple there's a difference between people who agree to take pictures and exchange them and then those couples where one is secretly taking a picture and that woman or man doesn't know and then that picture is being...because when you're both taking those pictures and sending them, then, I mean, I think you do know that that person could broadcast it forward. But if you don't know the picture is being taken and then it's within a relationship and then it's sent on, I mean, that's just my 2 cents is listening to this. But clearly it's paving new ground with technology and consequences of actions nowadays. So with that, if there aren't any more questions, just appreciate the committee's time on that bill. [LB1034]

SENATOR ASHFORD: LB1006. [LB1006]

SENATOR MCGILL: All right. Thank you, Senator Ashford and members of the committee. I'm still state Senator Amanda McGill, introducing LB1006, a bill to prohibit state agencies from entering into contracts that include certain provisions. This bill was introduced to facilitate a conversation about efficient government and protecting taxpayer dollars. As written, LB1006 would prohibit a state agency from entering into a contract with a private prison or entity that guarantees payment for services not provided, unduly restricts the state agency from taking actions in the public interest, or unfairly places the burden of risk under the contract...on the taxpayers. The bill also prohibits a specific contract provision that guarantees certain occupation rates for private prisons, known as lockup quotas, or any other contracted facility. This section is intended to be preventative in light of what may or may not happen with prisons and if we may be building another one in the future. You will hear details from other testifiers today about the costly lessons learned in other states that have privatized their prison services. The contract restrictions in this legislation as written would apply to all state agencies, calling for a broad look at privatizing government services and what the state should or should not be contracting with. I believe that those testifying after me today will be speaking in the opinion that privatization of services...you know, just talking about whether or not that actually saves state dollars when you may be contracting for more beds or more services than are actually being used by folks through the state. So with that, I look forward to discussion. [LB1006]

SENATOR ASHFORD: Yeah, I...you know, this is interesting you bring this up because there was something, it was NPR or whatever the other day or some...recently that talked about these privatization of jails or prisons where effectively the state or whomever, the county, would be contracting with the public entity and would be guaranteed a certain number of, you know, beds. It'd be like...sort of like cities sort of

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privatize...don't privatize but they may own a hotel and get a private vendor in, but there's a certain guaranteed occupancy, and apparently that's a relatively prevalent practice. [LB1006]

SENATOR MCGILL: Um-hum. It's a huge problem. [LB1006]

SENATOR ASHFORD: I mean, it's sort of antithetical to trying to keep people out of prison that don't need to be there if you have to fill a bed in order to occupy. [LB1006]

SENATOR MCGILL: But that's how some of these... [LB1006]

SENATOR ASHFORD: But anyway, have you heard about that? [LB1006]

SENATOR MCGILL: Well, yeah. It's how some of these private organizations stay afloat--we'll work with you to build this prison but we need to make sure that we're going to make money on it. [LB1006]

SENATOR ASHFORD: Well, you have to guarantee us if we're XYZ private jail,... [LB1006]

SENATOR MCGILL: Um-hum. I mean, and we saw some problems even with child welfare and the privatization there and what we owed and had to end up paying them back. And so this legislation is intended to make us more thoughtful, I guess, moving forward, in terms of the contracts we're getting into, to make sure that we're not paying folks for services that were never used. [LB1006]

SENATOR ASHFORD: Well, if we're a state like other states around the country, the 17 CSG states, for example, that are reducing their prison populations, and if you're a private entity, you're probably going, well, I don't want to work with those states because they're actually reforming their prisons. So anyway, I think it's a...it's an interesting... [LB1006]

SENATOR MCGILL: Um-hum. [LB1006]

SENATOR ASHFORD: ...question because it seems to be a problem for many municipalities and states and... [LB1006]

SENATOR MCGILL: It is, and I don't want Nebraska to go down that path,... [LB1006]

SENATOR ASHFORD: No. [LB1006]

SENATOR MCGILL: ...even if we are building another prison. [LB1006]

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SENATOR ASHFORD: Whoa, who said building another prison? (Laughter) [LB1006]

SENATOR LATHROP: Are we doing that? [LB1006]

SENATOR ASHFORD: What? We're not doing that. Okay. Thanks, Amanda. Yeah, Senator Davis. [LB1006]

SENATOR DAVIS: (Exhibit 23) We have this letter from Frank Daley concerning... [LB1006]

SENATOR MCGILL: ...on the language being vague. [LB1006]

SENATOR DAVIS: Did you solicit this or was this... [LB1006]

SENATOR MCGILL: No. In fact, the first time I saw it was sitting down at this table, and so I need to show it to other folks I've been working with on this bill and see if there's things that can be done to make that language less vague. [LB1006]

SENATOR DAVIS: And your intent is not to prohibit private prisons, is it? [LB1006]

SENATOR MCGILL: No, it would not prohibit them. And we do have other things in statute, other requirements for if we were to privatize, certain process laid out or a few hoops and things like that jump through. [LB1006]

SENATOR ASHFORD: Well, I mean,...yeah. [LB1006]

SENATOR DAVIS: Well, and I share your concerns. I think I know where you're going with this and I support the idea. [LB1006]

SENATOR ASHFORD: Thanks, Amanda. [LB1006]

SENATOR MCGILL: All right. Thanks. [LB1006]

SENATOR ASHFORD: Okay, Mike. [LB1006]

MIKE MARVIN: How did you know it was going to be me next? [LB1006]

SENATOR ASHFORD: Well, I don't know. You just...you were in the...you seemed like... [LB1006]

MIKE MARVIN: (Exhibits 21 and 22) Good afternoon, Senator Ashford, members of the committee. My name is Mike Marvin, that's M-i-k-e M-a-r-v-i-n. I am the executive director of the Nebraska Association of Public Employees. That is the union

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representing the vast majority of executive branch state employees. I'm submitting my written testimony and I won't...as late in the day as it's getting, I won't read it all to you. You have it. But in addition I have submitted to you some testimony I hope you accept from In the Public Interest. They are a partner with AFSCME, our international union. They deal with a lot of privatization issues and they asked me to submit that written testimony on their behalf. In my testimony I talk about several things. You know, there's many contracts being let around the states that were around private prisons but also state hospitals, developmental disability, things that guarantee a certain occupancy rate to do things, and we really don't believe that the state should ever enter into a contract that guarantees an occupancy rate. I cite the child welfare reform payout of \$2.5 million, but let me clarify a little bit on that. I think that you probably did the right thing making that payout. The problem was with the contract that was let with KVC, and we don't think it was done properly. So we want to make sure that things get done in a proper manner. We want to make sure that there are no unscrupulous contractors that come in and underbid and then come in, you know, knowing that they are going to be able to get more later. There...as we were talking about the prison reform, it brings me to one of my last points in my contract. As you said, Senator Ashford, that's...with the move in the country to move away from the prisons and do things, that is kind of going away. Several states have taken it away altogether, most notably, Idaho, who just got rid of them; Louisiana is working on that. But what has come up since that time is something that's being addressed in your prison restructuring bill is probations. There are a lot of private probation companies out there now that are going out and seeking contracts with state governments who are trying to get their prison population down and expand it into the probation area. And we think that you may have a hard time if your bill gets through filling all those probationary positions, so we may see some people coming in trying to seek those kind of contracts. [LB1006]

SENATOR ASHFORD: Actually, I've been...I've actually...people have contacted me in that field since we started working on this saying, well, they'll...you know, they have a soup-to-nuts solution or whatever, they'll do everything for you and, you know, find people jobs or whatever it is, and it is...and it does seem to be a fairly...seems to be out there. [LB1006]

MIKE MARVIN: It is out there, and we have real concerns about that, that those contracts be let right. Now let me, you know, say this, because you know that I am the executive director of the state employees union, and those probation jobs are state jobs, but they fall under the judicial branch, which we have no representation with those people. I'm not here trying to protect my own jobs that I represent. This is a problem. It chews up state dollars. We don't think it's a good thing. I'm not trying to protect my own jobs. So with that I'd be happy to answer any questions. [LB1006]

SENATOR ASHFORD: Senator Seiler has one. [LB1006]

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SENATOR SEILER: I'm just thinking out loud. Is this language, which is pretty broad, broad enough to stop revenue bonds for the University of Nebraska football field? [LB1006]

MIKE MARVIN: I wouldn't think so, Senator, but I'm not an expert on that. [LB1006]

SENATOR SEILER: It's a guaranteed revenue source and it's an indebtedness to private people. [LB1006]

MIKE MARVIN: They're not contracting for a state service, they're investing. [LB1006]

SENATOR SEILER: Sure, they are. [LB1006]

MIKE MARVIN: They're investing in it. [LB1006]

SENATOR SEILER: What do you think that football game is? (Laughter) [LB1006]

MIKE MARVIN: You know, I really don't know how to answer that question and I would... [LB1006]

SENATOR SEILER: Put it onto a subdivision of the university. [LB1006]

MIKE MARVIN: In my opinion, the intent would not be that but... [LB1006]

SENATOR LATHROP: Doesn't our constitution prohibit the guaranteeing of some private debt? [LB1006]

SENATOR SEILER: Except under municipal revenue bonds, yeah. [LB1006]

MIKE MARVIN: Does it? Okay. [LB1006]

SENATOR ASHFORD: Okay. Thanks, Mike. [LB1006]

MIKE MARVIN: Thank you very much. I appreciate your time. [LB1006]

SENATOR ASHFORD: Thank you. Okay. Kieran. [LB1006]

KIERAN McCARNEY: Good afternoon. My name is Kieran McCarney, K-i-e-r-a-n M-c-C-a-r-n-e-y. I'm the communications director for the Nebraska State AFL-CIO. First, an apology. Our president, Rod Vlcek, was hoping to be there this afternoon. Unfortunately, he's come down with strep throat, so you get the guy out of the bullpen this afternoon. We're here to testify in support of LB1006. The Nebraska State AFL-CIO supports this bill for several reasons. First and foremost, it is sound fiscal policy for the

state. Though Nebraska is not currently contracted with any private prison company for the administration, the statute being amended establishes a mechanism to pursue these contracts. In states that have chosen to privatize their correctional systems in whole or in part, lockup quotas or low crime taxes have become ever more commonplace, rising as high as 100 percent guarantees at facilities in Arizona and Virginia. These quotas functionally force the taxpayers of these states to guarantee the profits of the private prison contractors. The labor movement prides itself on providing the highest quality of work in an efficient manner, and we feel the state should expect the same from its contractors. Any policy that encourages the state to pay for services not provided or that hamstring meaningful policy changes to reduce incarceration rates is not sound fiscal policy and runs in direct conflict with the best interests of our citizens and our taxpayers. Additionally, private prison contractors tend to pay significantly lower compensation packages than state agencies covered by collective bargaining agreements. One such company in Florida offered salaries of merely \$16,000 per year, slightly higher than minimum wage and nowhere close to a living wage. This had led to recruitment problems, high turnover, and training deficiencies, all impacting the safety of employees and prisoners alike. Facilities routinely cut corners, minimized staffing, and were the source of a disproportionate number of reports of abuse of inmates and employees. By placing an additional barrier to effective oversight and enforcement, states entering into private prison contracts have only seen these problem exacerbated. We believe that without taxpayer-guaranteed profits, the likelihood of privatization diminishes in Nebraska. We recognize the hard work this committee, the full Legislature, and the Governor have put into meaningful and necessary justice system reforms, and we would ask that this simple policy fix, LB1006, be included in the ultimate package that emerges from this debate. It is sound fiscal policy, protects taxpayers, workers, and individuals within the justice system. And I'll be happy to entertain any questions you might have. [LB1006]

SENATOR ASHFORD: I don't see any. Thanks, Kieran. Any opponents? Neutral?  
Senator McGill. [LB1006]

SENATOR MCGILL: I will waive. [LB1006]

SENATOR ASHFORD: Senator McGill waives. That concludes the hearings. [LB1006]