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Judiciary Committee
September 08, 2014

[LR520]

The Committee on Judiciary met at 1:00 p.m. on Monday, September 8, 2014, at the Quality Inn, Ogallala, Nebraska, for the purpose of conducting a public hearing on LR520. Senators present: Brad Ashford, Chairperson; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Steve Lathrop, Vice Chairperson; and Ernie Chambers.

SENATOR ASHFORD: Maybe, well, we can't do that. I was going to think someday we were going to try to get so...get it so people can hear, but other than...other than speak loudly, I guess that's my only caveat here. Thank you all for coming. My name is Brad Ashford and had a lovely drive from Omaha. It's a beautiful state, good roads. Ogallala is a great place. There's water in the lake. So it's great to be here. Let me introduce my colleagues: Colby Coash is a senator from Lincoln; and Senator Amanda McGill is from Lincoln as well; and Senator Les Seiler is from Hastings. He's been hunting doves but he says it's all fine; he's going to be good. Oliver VanDervoort is our committee clerk, and Diane Amdor is committee lawyer, counsel. So we're here today to talk about issues involving marijuana and the impact of...on law enforcement generally of the change in laws in Colorado and how it affects our enforcement capabilities here and how it's...how we are addressing those issues--very important, very important work. It's something we've discussed in the Legislature. This last year we dealt quite a bit, as you know, with the synthetic marijuana and other related matters, but this is a whole new phase of the issue. And we've also discussed over the years really the impact of what is the federal government doing in enforcement, and now as you have these various different states dealing with legalization, what impact...or what impact is the federal government going to have, if any, on trying to help your efforts. So with that, Senator Coash has volunteered to introduce the resolution. Senator Davis, I'm sure, is on his way but, Senator Coash. You know, those with the shorter, you know, distances are always late. Senator Coash. [LR520]

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SENATOR COASH: You want... [LR520]

SENATOR ASHFORD: I don't know how to do it. Why don't you stand and...do you want to stand talk to... [LR520]

SENATOR COASH: Well, I'm caught here, right, so we'll do this. Okay. Well, thank you all for being here. My name is Senator Coash. I am one of the cointroducers of this resolution. I serve on the Judiciary Committee with Senator Davis, who represents the western part of the state. And since he's not here yet and we want to get started, I'm going to go ahead and introduce this resolution. This is LR520 which does have several purposes, which I do want to read into the record and let everybody hear so that your testimony can reflect what it is that we're looking for with regard to having a hearing out here and inviting the folks who have been invited. But what we are attempting to get out of this study is to study the following issues: the steps that local law enforcement and the state of Nebraska can take to mitigate problems associated with marijuana; an assessment of the adequacy of law enforcement in Nebraska, in Nebraska counties that border Colorado; a determination of the needs to increase the presence of the State Patrol in counties that do border Colorado; an evaluation of how affected counties can deal with increased costs of the judicial system; and whether current fines and penalties are adequate or if Nebraska should consider more significant and different deterrents to the illegal transportation of marijuana in Nebraska. So that's what the hearing states. As a committee, we've talked about this several times. Senator Davis, as a member of the committee, has brought this to our attention. Senator Schilz from...as I say "Senator Schilz," he walks right in. Senator Schilz from this area has also talked with the committee about this. The resolution I read outlines what the study is for. For the record, here's what the study is not about. The study is not about legalization of marijuana. That's not what we're here to talk about today. We'll talking about the current policy and where we stand with it today, where it can go in the future. What I do want to say, and this is...and then we're going to get into the testimony, is that I think we've done an adequate job of framing the problem. I think everybody is pretty aware of what the

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problem is. For those who testify and want to touch on the problem, I think that's appropriate, but what we're really wanting to hear from the folks we invited is what are some thoughts about solutions. And what can we do about the problem is, from the committee's perspective, the most important pieces of feedback that we came this way to get from you. So with that, we have some invited testimony and so... [LR520]

SENATOR ASHFORD: Right. Yeah, thank you, Senator Coash. And of course you all know Senator Schilz is here and Mark Christensen and of course Senator Davis, and these three senators have really taken a leadership role in making sure that the Legislature is fully informed of these issues. And that's why we're here today, because of the three western senators who have asked us to be out here. So let me see what we have. Why don't we...we don't have all the...one of your colleagues mentioned do we have the three-minute light system here today. Where is that three-minute light system when you need it? (Laughter) No. Well, try to keep your testimony to around five minutes or so, because there will be questions I think. And we're not under any, you know, real strict time frame, but...well, I do have a list of testifiers and I know there's going to be more than just this list. But why don't we go down the list. Ryan is here from UNO. Do you want to lay the groundwork a little bit for us, Ryan? Come on up and testify for us. [LR520]

RYAN SPOHN: Yeah, I can do that. [LR520]

SENATOR ASHFORD: And he's going to talk about deterrence and collection of data. And then we'll get into Kathy Seacrest, I see she is here as well from North Platte, from Region II. Probation in District 11 is here...and, yep, how are you? We have two county attorneys--well, I know we have a couple--from Hall County and Cheyenne County, and I don't know if there are any others. And then we'll get into the law enforcement testimony as it goes. So let's start with Ryan. If you'd state your name and where you're...by whom are you employed and go from there. [LR520]

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RYAN SPOHN: Good afternoon, Senators. [LR520]

SENATOR ASHFORD: This is going to be really tough to hear. I wonder if you could kind of turn at an angle kind of so that...can you go to even the end? Does that work? Oliver, can you...that way kind of talking to the mike and to the group so that we...oh, okay, we could do that too, actually, but...can move the table. Why don't we...let's try this at first. Let's just see how it goes. So, Ryan, you want to sit at the end there and... [LR520]

SENATOR DAVIS: You guys let us know if you can't hear. [LR520]

SENATOR ASHFORD: Yeah. [LR520]

RYAN SPOHN: (Exhibit 1) Good afternoon, Senators. My name is Dr. Ryan Spohn, spelled R-y-a-n S-p-o-h-n. I'm director of the Nebraska Center for Justice Research at the University of Nebraska-Omaha. I am testifying today as an individual and not as a representative of UNO. And I want to say that any action taken in response to the impact of the changed laws in Colorado must take into account the full impact of any legislative action for local law enforcement, state law enforcement, and our correctional system. I wanted to point out some current trends and predicted trends in arrests and citations for marijuana possession and sale in Nebraska based on data that was provided by the Nebraska Legislative Research Office, via the Crime Commission. And for the record, the tables are in my testimony. You can't see them, of course. But I compared counties of interest for LR520 to non-LR520 counties--counties to the east, nonborder counties. And for the border counties, the LR520 counties, we've seen a steady increase. The data I have is from 2000 to 2013, and there's been a steady increase in arrests and citations for those border counties already. In contrast, arrests for the non-LR520 counties have remained almost perfectly flat. So we are already seeing an increase for the border counties. Also included in my figures are five-year linear predicted trends, and these trends reflect the best estimate for a linear trend if the

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patterns exhibited in the years 2000 to 2013 continue. This trend is also flat for the non-LR520 counties, suggesting that, all else equal, we will not see an increase in the eastern part of the state in arrests and citations. However, the linear trend for the LR520 counties rises, suggesting (public address system turns on) whoa... [LR520]

SENATOR MCGILL: Hey! [LR520]

SENATOR SEILER: That got your attention. [LR520]

RYAN SPOHN: ...suggesting that even if there is no impact from the linear...no impact from the legal changes in Colorado, one would expect higher numbers of arrests for the years 2014 through 2018. So based on these findings, future increases in arrests for the LR520 counties would only indicate an impact of the legal changes in Colorado if these increases were more substantial than that indicated by our predicted linear trend, based on the data preexisting the changes in Colorado. So we're already seeing an increase. So we need to see if that increase is larger with these changes in Colorado. In addition to these charts, I would like to speak about our scientific knowledge of the deterrence process as it relates to law enforcement efforts and legal penalties. Issue number 3 of LR520 addresses a potential need to increase the presence of the Nebraska State Patrol in border counties. This increased law enforcement presence would represent a potential increase in the certainty of apprehension for marijuana offenders. In addition, issue number 5 of LR520 addresses whether current fines and penalties are adequate and serve as significant and effective deterrents to the marijuana trade. In general, research indicates that increases in certainty of punishment, as opposed to severity of punishment, are more likely to result in deterrence. Most simply, this is the case because if individuals do not believe they will be caught, the certainty of punishment...or the severity, excuse me, of punishment doesn't matter because they do not believe that the punishment will occur. Based on the research evidence, at first glance, an increased State Patrol presence would be more effective than increased fines and penalties. However, increased certainty of apprehension only serves as a deterrent if potential

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offenders perceive that certainty has increased. And this is the purpose of marketing campaigns, such "Click It or Ticket" for seat belt use or "You Drink, You Drive, You Lose" for drinking and driving. Moreover, the costs of an increased law enforcement presence should be compared to the benefits of any potential deterrence to determine if this would be a cost-effective practice. To give an example from research of what could be expected, in a study of drunk driving, when certainty of apprehension was increased by 10 percent, drunk driving was found to decrease by 3.5 percent. Now issue number 5 of LR520 addresses potential increases in penalties for marijuana possession and/or sale. Decades of research on deterrence suggests that increases in severity of punishments do little to deter criminal behavior. For example, if fines for possession were hypothetically \$500 and were increased 50 percent to \$750, few individuals would be deterred from committing this crime. Major reasons for a lack of deterrence effect of increases in severity include: one, because most crimes do not result in an arrest and a conviction, persons do not believe they will be caught so they do not think about punishment; two, persons are not aware of the increases in punishment--this would be particularly true of out-of-state residents who have no idea of Nebraska's legal system; number three, studies indicate that half of all state prisoners were under the influence of alcohol or drugs at the time of their offense, and this is particularly true of drug offenders. Persons under the influence tend not to think rationally, so they are not weighing the implications of punishments for their crimes. In conclusion, because any changes in Nebraska's laws in relation to marijuana possession or sale could prove to be even more costly to our current...than our current system, I encourage legislators to consider what we know about deterrence, certainty of punishment, and severity of punishment in addressing this matter. Thank you for your consideration, and I would be more than happy to answer any questions. [LR520]

SENATOR ASHFORD: Yes, Senator Christensen. [LR520]

SENATOR CHRISTENSEN: Thank you. Ryan, are these your charts did you say in here? [LR520]

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RYAN SPOHN: My charts are...those are not my charts but they're the same data and they're very similar. [LR520]

SENATOR CHRISTENSEN: Okay. I guess one of them says is there any benefits in Nebraska associated with the legalization of marijuana in Colorado, and it's got 5 percent. What would that be? What would be of benefit? [LR520]

SENATOR DAVIS: That's the survey. [LR520]

SENATOR CHRISTENSEN: Oh, that's from a survey. From...so who answered the survey? [LR520]

DIANE AMDOR: It's, so the first page of it, a variety of law enforcement officers, yeah, and where they're from. [LR520]

SENATOR DAVIS: We sent it out to the sheriffs, the State Patrol. [LR520]

SENATOR CHRISTENSEN: So I guess I'm not seeing what a benefit is, so. [LR520]

SENATOR COASH: Some people thought there would be. [LR520]

SENATOR CHRISTENSEN: Okay. [LR520]

RYAN SPOHN: Would you like me to... [LR520]

SENATOR CHRISTENSEN: If you want to expound on that, that would be great. [LR520]

RYAN SPOHN: I mean hypothetical benefits would be the things that Colorado might

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see, and I think that we need to keep our eye on Colorado and see how it goes, but potential benefits would be taxation, obviously. If we can tax marijuana trade similar to the way that we tax alcohol, then that money can be spent on enforcement. That money can be spent on treatment, rehabilitation, prevention. And another benefit would be reduced costs in apprehension, detention, incarceration of offenders. That would be my take. [LR520]

SENATOR ASHFORD: Yeah, but just...your conclusion is that increased enforcement would have an impact on this issue, correct? So the more people that are on the ground dealing with it, what...the penalties may or may not have a direct impact but enforcement would have an impact. [LR520]

RYAN SPOHN: That is correct. If we had increased enforcement and people were aware of that increased enforcement and believed or perceived that their likelihood of apprehension was increased, that could have an impact. [LR520]

SENATOR ASHFORD: Okay. Senator McGill. [LR520]

SENATOR MCGILL: This may be a question more for folks coming up, the locals, but I'm interested and I'm honestly surprised to see that it was increasing at this rate over ten years and not just over the last year. And so I'm assuming your research didn't look into what was causing that trend before the legalization. [LR520]

RYAN SPOHN: Right, we haven't looked at that yet. That is a potential. If we wanted to do additional research in this area, we could look at other characteristics of those counties, population trends,... [LR520]

SENATOR MCGILL: Yeah. [LR520]

RYAN SPOHN: ...other types of crimes and things. We could try to look into the why.

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[LR520]

SENATOR MCGILL: Yeah. I just was unaware that it had been going up like that over a longer period. [LR520]

RYAN SPOHN: I was unaware as well. [LR520]

SENATOR ASHFORD: And you looked at all the border counties or just at Colorado? [LR520]

RYAN SPOHN: We looked at the...what were considered the LR520 counties, so. [LR520]

SENATOR ASHFORD: Okay. So it's Colorado. So I mean there were...the access to marijuana prior to the total legalization was greater in Colorado because of the other, the laws that they had in place prior to full legalization. You had access to marijuana for medicinal, medical purposes. [LR520]

RYAN SPOHN: That is possible, yeah. [LR520]

SENATOR DAVIS: Actually, Brad,... [LR520]

SENATOR ASHFORD: Yeah. [LR520]

SENATOR DAVIS: ...the LR520 counties are everything west of Lincoln County. [LR520]

SENATOR ASHFORD: Okay. [LR520]

SENATOR DAVIS: And that data that's in the book is from 2000 to 2013,... [LR520]

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SENATOR ASHFORD: Okay. [LR520]

RYAN SPOHN: Correct. [LR520]

SENATOR DAVIS: ...so it predates... [LR520]

SENATOR ASHFORD: Okay. [LR520]

SENATOR DAVIS: ...what happened in Colorado actually. [LR520]

RYAN SPOHN: It does. [LR520]

SENATOR ASHFORD: Okay. Thank you. Okay, thanks. Thanks, Ryan. Kathy, you're next on the list here, Kathy Seacrest from North Platte. Go ahead, Kathy. Thanks. [LR520]

KATHY SEACREST: Thank you, Senator Ashford. I'm Kathy Seacrest, S-e-a-c-r-e-s-t. I reside in North Platte but direct Region II Human Services, which covers 17 counties in west-central Nebraska, so have some experience with what's happening. I don't have formal testimony for you today, unfortunately. Diane was kind enough to invite me, but I was out of town until this morning, so. But a couple of things that we're noticing, one is...and this does not involve the Judiciary Committee but, as senators, I'd like you to be aware of it. Certainly it's tougher from the treatment side because access has increased and so that's a piece that we're seeing. The other piece treatmentwise is the difficulty in recruiting substance abuse counselors to this area, so a couple things that make it difficult in terms of treatment aspect. In terms of some of the specific questions that you've asked, certainly the perception of getting caught, we know from our talking with folks who are in trouble that that immediately does raise the risk level and they do pay attention. I think, although research may not bear this out, higher penalties do make a

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difference if we publicize them, you know, if people know, look, you come to Nebraska and do this, your risk of getting caught is huge and your penalties are big. In our treatment field, we often have requests from Colorado citizens to do treatment here--and although we can't do it on our sliding fee or anything--periodically. And their conditions for people to get off probation are much stricter in terms of how many hours of counseling, how many hours of education, how much they have to do to get off probation. So that's another thing I have noticed, is it's significantly higher. Now, of course, none of those exist with marijuana being legal there now, but previously we would note that. So I don't think Nebraskans perceive using marijuana as risky at all, and so that perception makes prevention very difficult for our high school kids, for our young people. We are attempting to do...we also do prevention in this area and we're attempting to make sure that we are targeting the increased risk factor so that that perception goes up. Because when we do the youth surveys, it shows that really people are convinced there is no risk. So we will be targeting that as part of our efforts. So, be happy to answer any questions I might know the answer to. [LR520]

SENATOR ASHFORD: Yes, Senator Davis, Senator Christensen. [LR520]

SENATOR DAVIS: Thank you, Ms. Seacrest. [LR520]

KATHY SEACREST: Sure. [LR520]

SENATOR DAVIS: A couple questions, thank you, Senator Ashford. So you say that there is an increasing problem because of the prevalence of...or the "availability," I guess is the word, of marijuana in Colorado. [LR520]

KATHY SEACREST: I think it's always been available but certainly we have heard from folks who are in treatment that the lure is closer now. You know, it's so accessible. [LR520]

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SENATOR DAVIS: So do you know some of your people who are in treatment who are driving there to get what they want? [LR520]

KATHY SEACREST: Yes. [LR520]

SENATOR DAVIS: Then you said some people come here to take treatment. [LR520]

KATHY SEACREST: Uh-huh. In the past, if people are near the border and they're in Colorado and they've been caught, they will see if we will treat them here. And we can as long as (a) we have access and not depriving any of our citizens, and (b) we don't do a sliding fee scale. They pay full pay. But what we have noticed is the enormity of what they have to complete once they're caught, and it's drastically different than Nebraska. [LR520]

SENATOR DAVIS: So if they come here to take Nebraska treatment, does that qualify when they go back to Colorado? [LR520]

KATHY SEACREST: Yes. [LR520]

SENATOR DAVIS: It does. [LR520]

KATHY SEACREST: Yes. [LR520]

SENATOR DAVIS: Okay. Thank you. [LR520]

SENATOR ASHFORD: Senator Christensen. [LR520]

SENATOR CHRISTENSEN: Thank you, Senator Ashford. I was in a public school speaking this morning and I mentioned this hearing. A couple teachers come up to me afterwards and said they have seen kids as young as 2nd grade, 3rd grade that are

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having memory problems from parents that were doing marijuana. Is there statistics behind that? [LR520]

KATHY SEACREST: There...yes, there certainly is, just like with alcohol. It impairs the fetus anytime, you know, a pregnant woman ingests artificial substances of any kind, including many prescription drugs. And that's why many clients are taken off prescription drugs when they're pregnant. It impacts the fetus, there's no question. The other piece, and I don't have copies of all of this because it's fairly recent, but the other allure we're seeing is the way things are dressed up to be alluring. You know, it looks like soda pop. It looks like a candy bar. It's, you know, it...and I don't know how law enforcement is ever going to catch that it's in somebody's car except with...you know, when it looks like this, how would you know that that has marijuana in it, you know, those kinds of things? Or there's another one in here that's basically, you know, it looks like a typical granola bar that, you know, we would all be eating. So it's going to be...I mean the enforcement issue I think is huge. And I would certainly say that we need more enforcement at all levels, but then the penalties have to be there as well and, you know, the follow through or Coloradoans will feel like, well, so what? [LR520]

SENATOR ASHFORD: Yeah. Okay. Thank you, Kathy. [LR520]

KATHY SEACREST: Sure. Thank you. [LR520]

SENATOR ASHFORD: Why don't we...John, why don't you come up from the Attorney General's Office. And then we're going to go to the sheriffs' law enforcement team, and then county attorneys. How many of the sheriffs' law enforcement people here wish to testify? Okay. And, John, why don't you lay the frame... [LR520]

JOHN FREUDENBERG: I was just here to answer any questions that you guys...that you now have. [LR520]

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SENATOR ASHFORD: Why don't you lay the framework on what the laws are in Nebraska now and how...and I know we've got some data on it in our files, but just your observation. And you might comment a little bit on some of the, what Kathy just mentioned, the, you know, the use of pop and soda pop and other forms of disguising the marijuana. [LR520]

JOHN FREUDENBERG: My name is John Freudenberg, J-o-h-n F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief in the Nebraska Attorney General's Office. Some of the questions you asked me to identify, I believe many of the law enforcement officers are going to probably have better... [LR520]

SENATOR ASHFORD: Okay. [LR520]

JOHN FREUDENBERG: ...hands-on information than I do. The consumables I... [LR520]

SENATOR ASHFORD: Well, let's start with this. What about your...do you have...does your office have discussions with the Colorado attorney general's office or any of...in any...do you have any communication? I suppose you probably wouldn't since it's legal in Colorado, but. [LR520]

JOHN FREUDENBERG: We have not had any communication with the Colorado attorney general's office about this issue as far as I'm aware of. [LR520]

SENATOR ASHFORD: Okay. [LR520]

SENATOR MCGILL: What about other surrounding states that would be facing the same problem? [LR520]

JOHN FREUDENBERG: Yes, we have been talking about them and trying to find out

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how they're addressing them, and many of them are facing the exact same issues that we are. And they're all trying to grasp it: Well, what do we now? [LR520]

SENATOR ASHFORD: And is there anything developed from that? Are there any sort of regional approach? [LR520]

JOHN FREUDENBERG: There has not been a regional approach. [LR520]

SENATOR ASHFORD: How about discussions with the federal prosecutorial teams or, you know, U.S. Attorneys, others on the federal side? [LR520]

JOHN FREUDENBERG: There was a meeting last week that I believe many of the members here, law enforcement members here, attended with U.S. Attorney Deb Gilg, and they were discussing their options. Our office has not independently spoken with surrounding U.S. Attorneys. However, we do have a member of our office now who is cross-deputized with the practice in the federal courts to help prosecute these matters, and it's Corey O'Brien. [LR520]

SENATOR ASHFORD: Okay. Thanks, John. And you'll just stick around and if anything else comes up, we'll... [LR520]

SENATOR DAVIS: John, can you... [LR520]

SENATOR ASHFORD: Sorry, Al. [LR520]

SENATOR DAVIS: Excuse me, Brad. I... [LR520]

SENATOR ASHFORD: I didn't see your... [LR520]

SENATOR DAVIS: ...I didn't flag you down, but. [LR520]

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SENATOR ASHFORD: No, that's okay. Proceed. [LR520]

SENATOR DAVIS: When we talked the other day, we talked about the issue of arrests versus citations. [LR520]

JOHN FREUDENBERG: Correct. [LR520]

SENATOR DAVIS: Can you...I don't know if the committee is aware of that. Can you elaborate on that with the committee a little bit? [LR520]

JOHN FREUDENBERG: After our discussions, I went and looked into a little...into it a little bit more and possession of marijuana, less than an ounce, is an infraction-level offense. So there was a question whether that is something that would lead to an arrest. However, when we go back and look at the statute, it's perfectly allowable to arrest for an offense like that due...under our statutory scheme. In many cases, especially in the eastern part of the state, arrests like that do not occur due to the fact that marijuana, low-level possession of marijuana was basically decriminalized back in the '70s, I believe it was, and knocking it down to an infraction-level offense as opposed to a straight-up misdemeanor. [LR520]

SENATOR COASH: So what happens after an ounce? [LR520]

JOHN FREUDENBERG: They get...the penalties go up. It's still a misdemeanor between an ounce and a pound. And over a pound I believe it becomes a felony. [LR520]

SENATOR MCGILL: Uh-huh. [LR520]

JOHN FREUDENBERG: Is that correct? [LR520]

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_____: Correct. [LR520]

SENATOR MCGILL: Yes. [LR520]

JOHN FREUDENBERG: Yeah. I look back on my experts. [LR520]

SENATOR DAVIS: But you see it that it's being treated differently across the state in terms of the arrests. Is that what you're telling me? [LR520]

JOHN FREUDENBERG: That, once again, will have to be a question you'll need to address with local law enforcement to see how they're addressing it. I do know in the eastern third of the state arrests are not being made for infraction-level offenses. However, I can't speak how it's being handled out here. [LR520]

SENATOR DAVIS: Do you know if the product that's coming out of Colorado, when people are making arrests, is a purchased legal product in the state of Colorado, or is it the kind of stuff that's coming out of Mexico? Any idea? [LR520]

JOHN FREUDENBERG: I don't know. I don't know why you would have to go buy the illegal pot because the legal pot is really high quality. I wouldn't be surprised if we started having pot tourism from Amsterdam because the stuff in Colorado has a lot higher THC level. [LR520]

SENATOR DAVIS: You know I asked that question because one of the things that I thought might happen is that you could have essentially the cartel movement up into Colorado, start growing it there and get it out. [LR520]

JOHN FREUDENBERG: Absolutely. And I believe that's something that was also discussed in the meeting law week, was the...I believe there...there's some believe that

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the cartels are now using the Colorado drug trade as money laundering. And, you know, this is their business. I don't imagine they'll just go away. [LR520]

SENATOR DAVIS: Thank you. [LR520]

SENATOR ASHFORD: Senator Davis brings up a great point, I mean the idea that the growing, the production of marijuana or the purchase of large quantities of marijuana by cartels in Colorado. Are there any limits in Colorado law on how much you can purchase at any given time? [LR520]

JOHN FREUDENBERG: Yeah, there are. I'm not real familiar with them. There are limits how much an individual can purchase. [LR520]

SENATOR ASHFORD: But do we know, and as far as you know there have not...you're not aware of cartel activity in Colorado at this point? [LR520]

JOHN FREUDENBERG: I'm not aware, but it's also something I really haven't been watching that closely. [LR520]

SENATOR ASHFORD: Okay. Okay. Well, let's talk to the guys on the ground for a moment. [LR520]

JOHN FREUDENBERG: Okay. [LR520]

SENATOR ASHFORD: And who would like to proceed? All right. [LR520]

SHAWN HEBBERT: (Exhibit 3) Good afternoon, members of Judiciary Committee. And, Senator Davis, Senator Coash, thank you for calling this hearing today. I'm Shawn Hebbert, spelled S-h-a-w-n H-e-b-b-e-r-t. I'm the Grant County Sheriff, the Panhandle representative and vice president of the Nebraska Sheriffs' Association, and a member

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of the Sandhills Area Sheriff's Association. I'm here today to testify to the situation as a whole. Others will follow me with specifics as to the cost to the taxpayers in regards to costs related to storage, increased jail populations, and burdens on the court system. I believe that society has a problem. Two wrongs don't make a right, and you can't solve a problem by simply decriminalizing whatever the problem is. Colorado has tried to show the nation how safe marijuana is and how to make money by taxing it, how to empty your jails by decriminalizing the problem. They would like us to see how they were a forward-thinking state on the rise. And quite frankly, they are on the rise. According to statistics and news reports coming out of Colorado, unemployment is on the rise, disability claims are on the rise, their homeless rate is on the rise. Physical assault, sexual assault, robberies, burglaries are all on the rise. DUI drugs has outrun DUI alcohol, and drug-related fatal car crashes is up 100 percent. Their jail populations have grown and they're overcrowded. And tax dollars are roughly one third of the projected amounts and not nearly enough to pay for the negative social impacts to their state. If you don't believe that Colorado's problems don't bleed across the state line then you're a fool. To put it plain and simply, their problems are our problems, except we don't get any tax revenue to help pay for them. Earlier this year I talked and e-mailed with Senator Davis on this issue. One of his concerns was that law enforcement become more consistent with the rest, and I agree to a certain extent, but the inconsistencies I see don't lay with law enforcement. They lay with the law itself. You cannot be arrested for anything considered to be an infraction unless harm is likely to occur to either the individual or society, what Mr. Freudenberg was referring to as state statute 29-432. So an infraction is arrestable; doesn't happen very often. You can be arrested for committing misdemeanors. A few misdemeanors you can be arrested for--consumption of liquor on public property. You take a perfectly legal substance, put it in an illegal environment, you can be arrested for it. Believe it or not, having a headlight out, operating a vehicle with a headlight out is listed as a misdemeanor. Failure to dim is listed as a misdemeanor. You can be arrested for these offenses. But possession of less than an ounce of marijuana is an infraction, \$300 fine, don't even have to appear in court; just, you know, go away. We also have inconsistencies with the drug laws. State

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statute 28-416(7) says it shall be unlawful for any person to knowingly or intentionally manufacture, distribute, deliver, dispense, or possess with intent to do the same with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in any quantity, and it lists all the grams and all of the penalties for having a certain amount of the grams. Subsections (8), (9), and (10) use the exact same language with respect to crack, heroine, and methamphetamine respectively. However, (13) says possession of marijuana less than an ounce or any substance containing a quantifiable amount of the substance, chemical, or compound shall be guilty of an infraction. I have a current case right now where I have just under an ounce of marijuana along with four pieces of chocolate that weighed one ounce each. Total weight is just about five ounces. However, according to state law, they can only be charged with an infraction. If you truly want consistency, we need to elevate the marijuana laws to mirror the rest of the drugs listed as Schedule I drugs. I believe that the edibles, the candies, the cookies, the brownies, the chocolates, the things that an unsuspecting child can get their hands on, not knowing the difference, ought to have the stiffest penalties of all. Marijuana is on the drug schedule because of its addictive nature, and these all natural foods coming out of Colorado have an incredibly high potency to them. That being said, I would be happy to answer any of your questions. [LR520]

SENATOR ASHFORD: Yeah, Senator Coash. [LR520]

SENATOR COASH: Thank you. Thank you for coming. Can you speak to, and you can do this or one of the guys who follow you can, but I'm interested in the types of..."profile" seems to be a bad word but I'm going to use it. What's the profile of the folks who are being arrested, ticketed for possession that you're catching? Are we talking about local folks, folks passing through, young folks? [LR520]

SHAWN HEBBERT: I can only speak from my own experience. I can't speak for the rest of them. I live off of the border. I live 60 miles north of here, and what we catch is people

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passing through. [LR520]

SENATOR COASH: So they're not... [LR520]

SHAWN HEBBERT: The current case I was talking about is people from Texas. [LR520]

SENATOR COASH: Okay, so you're... [LR520]

SHAWN HEBBERT: I was involved in two other cases this year: people from Minnesota, people from Maryland. [LR520]

SENATOR COASH: Okay. So your ticket book and your jails aren't being written on people who live in the county you serve; they live someplace else and they happen to be caught coming through with it? [LR520]

SHAWN HEBBERT: Correct. [LR520]

SENATOR COASH: Okay. Thank you. [LR520]

SENATOR ASHFORD: Yes, Senator. [LR520]

SENATOR MCGILL: Just in general, how are you identifying who to search? I guess people are just driving through. How are those decisions being made, because I would think... [LR520]

SHAWN HEBBERT: Well, contrary to popular belief, I don't set up a lot of checkpoints and specifically... [LR520]

SENATOR MCGILL: Yeah, exactly. [LR520]

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SHAWN HEBBERT: ...specifically look for drugs. [LR520]

SENATOR MCGILL: Exactly. That's why I'm wondering, like, how does it happen?
[LR520]

SHAWN HEBBERT: I don't pull somebody over unless there's a violation of law. There's a violation of law, then we have certain indicators we look for. I'm not necessarily going to go into our training. You either have probable cause or you don't. If you don't, you turn them loose; if you do, you search. [LR520]

SENATOR MCGILL: Okay. So there's something. Okay. [LR520]

SHAWN HEBBERT: Most of the time, quite frankly, you can smell it. You walk up, they roll down their window. And this stuff is so potent, you know it before you ever walk up there. [LR520]

SENATOR MCGILL: (Laugh) Fair enough. My other question goes back to your...the testimony you gave. You know, we're here in part because of how overloaded things are out here. And then you've been talking about how you want to criminalize what's now an infraction. It seems to me you're creating even more work for yourself, but...so just tell me... [LR520]

SHAWN HEBBERT: All I'm trying to do... [LR520]

SENATOR MCGILL: ...how to balance that for me. [LR520]

SHAWN HEBBERT: All I'm trying to do, Senator McGill, is point out the fact that Senator Davis asked for consistency and I ask for consistency... [LR520]

SENATOR MCGILL: Uh-huh. [LR520]

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SHAWN HEBBERT: When you can be arrested for having a can of beer in the wrong place but not for having an illegal substance anywhere, that is inconsistent. And I believe if the state would get consistent, if we would be more forceful and just those stats the original gentleman had about the higher fines wouldn't necessarily stop anything, and then we hear from Probation saying, yes, it would. And I would tend to agree in the fact that when we stop people for speeding, the lower the fine class the happier they are. The faster they're going, the higher the fine and the more aggravated they are. There is a deterrent there. I truly believe there's a deterrent there. And marijuana, the heroine, the cocaines, those are all listed in grams. Marijuana is listed in less than an ounce, more than an ounce, less than a pound, and then more than a pound. And the aggravating part, the inconsistent part of that is the fact that the edibles are not considered marijuana. I don't care if you have a five-pound chocolate cake here laced with marijuana, that thing can only be charged as an infraction under state law. [LR520]

SENATOR MCGILL: I didn't realize that. My final question then is, you know, some of the earlier testifiers talked about how people just think they're not going to get caught, and so what needs to be done to help law enforcement identify, you know, people bringing it in? I know that's tough, like you need cause. [LR520]

SHAWN HEBBERT: Well, I most certainly like the thought that was brought up earlier of more cops. (Laughter) I know that's not necessarily a popular movement, but... [LR520]

SENATOR MCGILL: Yeah. [LR520]

SHAWN HEBBERT: ...there has to be a deterrent of some kind. And I don't have the answers. Probation and I go round and round. I'd like to see Probation have more teeth, you know. I...and I'm sure it's aggravating to Probation to have somebody violate probation over and over and over again, three or four times, before they're back in the

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court system. I would like that, you know. And again, I don't have the answer but I would like to see--I'm with Senator Davis--I'd like to see some consistency here. [LR520]

SENATOR ASHFORD: Senator Coash. [LR520]

SENATOR COASH: The folks that you're encountering that have this, I mean what kind of...categorize this in the folks who are caught with less than an ounce, less than a pound, or more than a pound. The folks that you're catching, how much are they trying to get through your county with? Little bit? A lot? Is it all over the board? [LR520]

SHAWN HEBBERT: Personal experience, everything has been less than a pound, more than an ounce. [LR520]

SENATOR COASH: Less than a pound, more. Is this like... [LR520]

SHAWN HEBBERT: Most of the...I don't mean to interrupt you. Most of the chocolates are, you'll see the fudges, the little squares, and they almost always weigh a perfect ounce each, whatever you're going to find. You'll find four or five of them. [LR520]

SENATOR COASH: But you don't smell that one coming to the car. [LR520]

SHAWN HEBBERT: No, most of that, you see it laying out. [LR520]

SENATOR COASH: Sure. [LR520]

SHAWN HEBBERT: They don't even try to hide that. It's... [LR520]

SENATOR COASH: Right. Is this kind of, I call it, Sam's Club shopping where it's like, well, I'm going to Colorado, I better get enough? [LR520]

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SHAWN HEBBERT: More or less. [LR520]

SENATOR COASH: You know, I don't know when I may be back there so I'm going to...I mean... [LR520]

SHAWN HEBBERT: The all natural foods that I mentioned in my testimony, the last case helping Cherry County out on Highway 83 of these guys from Minnesota, had a...it was grocery bag. And I can't remember the name of it. It was a grocery store name, all natural foods: fruits, nuts, and hot fudge. [LR520]

SENATOR COASH: All right. Thank you. [LR520]

SENATOR ASHFORD: Sure. Sorry, Senator. [LR520]

SENATOR DAVIS: Thank you, Senator Ashford. Thank you, Shawn, for coming. When we talked about the consistency issue, you know, we were kind of looking at that first data that came out from 2013 which showed quite a divergence between the two parts of the state. But I just want to ask a couple questions. So walk us through...well, first of all, in your personal experience, have you seen more arrests or more stops since Colorado legalized the recreational use? And I'm not sure when the medical use came into being there. Do you know that? [LR520]

SHAWN HEBBERT: Two thousand nine, I believe. [LR520]

SENATOR DAVIS: So you've been sheriff several years there. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR DAVIS: Are we higher from those periods? [LR520]

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SHAWN HEBBERT: Well, you know, traffic and population in Grant County is rather small, so any stats I would throw at you would seem remarkable, but. [LR520]

SENATOR DAVIS: Well, anecdotal though, you know? [LR520]

SHAWN HEBBERT: Yeah, yeah, it's increased and especially in the past year it's increased. [LR520]

SENATOR DAVIS: So then walk us through what goes through your process, I mean, after you have decided that...or after you find that they have the product and then take us through the whole step from the time you stopped that car until you get back to Hyannis. [LR520]

SHAWN HEBBERT: The stop is made. The arrest is made. They will be booked into jail. The affidavits of arrest are filled out, sent to the appropriate places. In my case, this last case, there was a lot of cash there so a deputy from another jurisdiction was there with me while we counted and verified all the cash. All the evidence has to be documented. Traffic stop took approximately 30 minutes; paperwork, 5 hours. [LR520]

SENATOR DAVIS: And then do you need... [LR520]

SHAWN HEBBERT: And it's still...that was in the middle of June and I think we go to court in September 30. [LR520]

SENATOR DAVIS: So did you make an arrest in that particular case? [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR DAVIS: So then you also had to take that person to Alliance? [LR520]

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SHAWN HEBBERT: Yes. [LR520]

SENATOR DAVIS: So that's another 2 hours. [LR520]

SHAWN HEBBERT: An hour transportation, an hour affidavit, yes, hour back home.
[LR520]

SENATOR DAVIS: So the amount of time then that goes into just one arrest for one
sheriff is? [LR520]

SHAWN HEBBERT: You can...I think I jokingly told somebody, somebody only has to
be stupid for 30 seconds and cost me an hour, and it's not too far off. [LR520]

SENATOR DAVIS: And so then with regard to these candies, you said that that is not
considered product or that's not considered...if you got four pieces of candy and a bag
of pot, but that candy is treated differently? [LR520]

SHAWN HEBBERT: It is. Under the marijuana laws, and I'll read specifically from the
book here, any person knowingly or intentionally possessing marijuana weighing one
ounce or less or any substance containing a quantifiable amount of the substance,
chemicals, or compounds, for the first offense be guilty of an infraction. So the candies,
I don't care how much of it you have, according to state law, if it's a first offense, that's
an infraction. So I told Ms. McGill, you could have a five-pound chocolate cake here, the
entire thing is laced with marijuana, that's an infraction. That's a \$300 fine. [LR520]

SENATOR DAVIS: And there's no... [LR520]

SHAWN HEBBERT: You walk out in the parking lot, drink a beer, and you're arrested.
[LR520]

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SENATOR DAVIS: ...there's no process to take away the food value of that and find out how much marijuana you've got in one of those things. [LR520]

SHAWN HEBBERT: Not necessarily, no. But the consistency I'm looking for in law is cocaine flat lists any mixture or substance containing a detectable amount, 140 grams or more, at least 28 grams but less than 140 grams. There's a penalty for each one of those. If these chocolates are weighable, then we can go to the marijuana laws which say, less than an ounce, more than an ounce, less than a pound, more than a pound. But right now they're plain...I mean they're very specifically listed as an infraction, period, doesn't matter what they weigh. [LR520]

SENATOR DAVIS: And you talked about Probation being a little stronger. What...can you give us some suggestions? [LR520]

SHAWN HEBBERT: Well, like I said, you know, and I'm sure Probation fights their head as well. One of the probationers I had not too long ago, he was on probation, turned around, arrested him for DUI. The only one that really got punished in that deal, since his probation officer was a female, they decided that on the probation offense, violation of probation, he would take a urinalysis once a month. And since she was a female, I was the one that got to hold him by the hand for six months because he violated probation. The violations of probation are basically a slap on the wrist for first couple of times. There's no deterrent there to keep them from violating probation. [LR520]

SENATOR DAVIS: Okay. Thank you. [LR520]

SENATOR ASHFORD: Let me...and those in the back of the room, if you have more information on this, let me know. But if the candy or the soda pop or whatever has THC in it, and that THC is a controlled substance under Nebraska law and can be prosecuted as a felony. So if you have a piece of candy, it's not the weight of the candy so much. It's the fact that there's THC...not marijuana but, you know, the chemical substance

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that...so I guess my question would be, have you...has your county thought about prosecuting that as a felony? [LR520]

SHAWN HEBBERT: Not... [LR520]

SENATOR ASHFORD: Or your reading of the statute is different, okay, essentially, okay. [LR520]

SHAWN HEBBERT: Yeah. And my drug test kits are going to tell me whether it's positive or negative. It's not going to tell me whether it was made with hash oil or... [LR520]

SENATOR ASHFORD: Okay. So somebody else may have information on this and they can come up, but it's 28-401(25)(a) (sic) is the statute that talks about...about that particular controlled substance. But that's fine. [LR520]

SHAWN HEBBERT: Okay. [LR520]

SENATOR ASHFORD: I appreciate your comments. [LR520]

SENATOR COASH: Thank you. [LR520]

SENATOR ASHFORD: Thanks. [LR520]

SENATOR DAVIS: Brad, I've got one more. [LR520]

SENATOR ASHFORD: Yeah. Yeah. [LR520]

SENATOR DAVIS: So, Shawn, if you need to bring a drug dog in for a search, how does that work? How long does it take? [LR520]

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SHAWN HEBBERT: Depends on where the dog comes from. I've used a dog from Keith County. That was on a search of a vehicle where the individual was already under arrest. The last dog I used came out...well, and that's...it's going to take over an hour. If they're in their care on duty, it's going to take over an hour to get to Hyannis. The last dog I used was out of Valentine. That's 100 miles. The State Patrol has dogs, if they're available. I think the closest State Patrol dog to Hyannis is out of North Platte. [LR520]

SENATOR DAVIS: So how many dogs are there within a 200-mile radius of Hyannis? [LR520]

SHAWN HEBBERT: Half a dozen. [LR520]

SENATOR DAVIS: And they could be out on another... [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR DAVIS: I mean the one in Keith County could be down in Christensen's part of the state, couldn't it? [LR520]

SHAWN HEBBERT: Right. Right. [LR520]

SENATOR DAVIS: Yeah. Thank you. [LR520]

SENATOR MCGILL: I've got another question. [LR520]

SENATOR ASHFORD: Senator McGill. [LR520]

SENATOR MCGILL: Are you seeing, with this increase in marijuana, are you seeing increases in any other substances, any other drugs, meth, cocaine, anything like that?

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[LR520]

SHAWN HEBBERT: Personally, I'm not. [LR520]

SENATOR MCGILL: Okay. [LR520]

SHAWN HEBBERT: And that's a great question to ask these border guys... [LR520]

SENATOR MCGILL: Yeah. Okay. [LR520]

SHAWN HEBBERT: ...because I know a few of them are seeing the increases there.
But personally I am not. [LR520]

SENATOR MCGILL: Okay. I will ask it to them. [LR520]

SENATOR SEILER: Brad. [LR520]

SENATOR ASHFORD: Yes, Senator Seiler. [LR520]

SENATOR SEILER: Sheriff, I'd like to take you through a...so I can get some idea what
kind of costs your county is looking at. You make a stop out on the highway. You bring
the individual in. Let's say he's charged with a felony. As I understand it, you have to
then send him to Alliance. How many miles is that? [LR520]

SHAWN HEBBERT: If I catch him right, it's 60 miles. Alliance to Hyannis is 60 miles.
[LR520]

SENATOR SEILER: Okay, because a lot of counties your size don't have jails. Is that
right? [LR520]

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SHAWN HEBBERT: Right. I contract my jail. [LR520]

SENATOR SEILER: Okay. You take him up there. Then you got to bring him back for county court. [LR520]

SHAWN HEBBERT: Right. [LR520]

SENATOR SEILER: About how long...how many times does your county judge meet in your county? [LR520]

SHAWN HEBBERT: One time a month. [LR520]

SENATOR SEILER: Once a month. So if he hits the day after the county is there, he's housed 30 days up there. Your county pays... [LR520]

SHAWN HEBBERT: And I've had that. I've had that happen. [LR520]

SENATOR SEILER: And your county pays for that. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR SEILER: Okay. Now you got to go get him, bring him to a preliminary hearing. [LR520]

SHAWN HEBBERT: Correct. [LR520]

SENATOR SEILER: Let's say he doesn't plead, he wants a preliminary hearing. You take him back because the judge isn't going to be there for another month or do they... [LR520]

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SHAWN HEBBERT: If it's bound over to district court then... [LR520]

SENATOR SEILER: No, no, don't...you got to have a preliminary hearing before you get there. [LR520]

SHAWN HEBBERT: Well, correct. Correct. Yes. Then I'll have to bring him back for preliminary. [LR520]

SENATOR SEILER: Okay. So that's more mileage, more time, work up there. [LR520]

SHAWN HEBBERT: Correct. [LR520]

SENATOR SEILER: Then you bring him back for his plea in district court. Say he's bound over... [LR520]

SHAWN HEBBERT: Right. [LR520]

SENATOR SEILER: ...and you got more mileage back and forth. Do you happen to know what you pay Alliance per day? [LR520]

SHAWN HEBBERT: It's \$95. [LR520]

SENATOR SEILER: Ninety-five dollars a day. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR SEILER: Okay. Then you bring him back and he wants a jury trial. Now do you have a full-time county attorney in your county? [LR520]

SHAWN HEBBERT: No. [LR520]

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SENATOR SEILER: Do you have a full-time defense counsel? [LR520]

SHAWN HEBBERT: No. [LR520]

SENATOR SEILER: So your county budget is paying for both those. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR SEILER: Okay. And now he's found guilty and he goes to D&E and then shipped back to Grand Island for...to serve time. Does he...does the county pay any part of that, do you know? [LR520]

SHAWN HEBBERT: After they have been sentenced, that is supposed to go on the state. [LR520]

SENATOR SEILER: Okay. So from the time he's arrested until the time he's found guilty and sent to the state pen,... [LR520]

SHAWN HEBBERT: That's on the county. [LR520]

SENATOR SEILER: ...that's all on the county. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR SEILER: How many cases can you afford to pick up? [LR520]

SHAWN HEBBERT: (Laugh) Well, we can't afford to pick up very many. [LR520]

SENATOR SEILER: That's what I thought. Thanks, Sheriff, for going through that with

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me. [LR520]

SHAWN HEBBERT: Yes. [LR520]

SENATOR ASHFORD: Thank you, Sheriff. Okay, next person from law enforcement, Sheriff from Scotts Bluff County. [LR520]

MARK OVERMAN: (Exhibit 2) Good afternoon. My name is Mark Overman, M-a-r-k O-v-e-r-m-a-n. I'm the Scotts Bluff County Sheriff. I'm also the advisory board chairman of the Western Nebraska Intelligence and Narcotics Group, known as the WING/HIDTA Task Force, which operates in the 11 counties of the Nebraska Panhandle. Prior to becoming Sheriff, I spent almost 32 years working for the Scottsbluff Police Department and I spent almost 17 years as a WING agent and supervisor. I'd like to thank the committee for studying this issue and for bringing this hearing to Ogallala. Colorado's legalization of marijuana has completely changed the landscape involving the marijuana that we encounter. Almost all of the marijuana that we see now originates in Colorado. The potency of marijuana that we encounter has increased dramatically, and the price has at least tripled. We are seeing a marked increase in the numbers of kids as young as 14 that are being cited for possession of marijuana. Local law enforcement is doing the best that we can to combat this problem with the resources that we have, but I believe our impact on the problem is insignificant. I know of no agency anywhere in Nebraska, including the State Patrol, that has undertaken any organized drug interdiction efforts directed at Colorado marijuana. When law enforcement seizes marijuana on a traffic stop, it happens because of what transpires on the stop. We make stops based on traffic violations--some sort of reasonable suspicion that provides a basis for the stop. From that point forward, it is something that the officer sees, hears, or smells that leads to the discovery of contraband and the enforcement action that takes place. The WING/HIDTA Task Force's primary mission is to combat methamphetamine and the drug trafficking organizations that distribute it. Although the task force assists with any drug case, marijuana is not a priority. The enforcement in Nebraska counties

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that border Colorado is inadequate. Generally, we have small sheriffs' offices, and they spend only a small fraction of their time patrolling major highways. We would welcome additional state troopers, but that will not solve the problem. Because this issue is so new, we are not properly tracking it, and the state can help with that. The state should mandate that agencies begin tracking and reporting the source of marijuana to the Crime Commission if the source is known. Another action the state should take is to mandate statistical testing for all drugs in fatal accidents instead of just alcohol. National Highway Safety Council statistics show a dramatic rise in Colorado traffic fatalities testing positive for marijuana from 6.9 percent in 2006 to 16.5 percent in 2012. In Nebraska, we simply don't know if this is happening. [LR520]

SENATOR ASHFORD: I'm sorry, Sheriff. What was that? Could you just say that again? [LR520]

MARK OVERMAN: Yes. [LR520]

SENATOR ASHFORD: That seems like a...what are we talking about? [LR520]

MARK OVERMAN: We're talking about statistical testing for all drugs in fatal accidents. We take a test on fatalities for statistical purposes and we're only testing for alcohol. That's all that we get back is a report on alcohol. We should be testing for other drugs, not just marijuana but other drugs too. There's plenty of other drugs of abuse to see if that is involved and contributed to a fatality traffic accident. And the statistics in Colorado... [LR520]

SENATOR ASHFORD: Oh, in Colorado, okay. [LR520]

MARK OVERMAN: In Colorado, the statistics have gone from 6.9 percent in 2006, 6.9 percent of fatalities testing positive for marijuana use; in 2012 it was 16.5 percent of fatalities. [LR520]

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SENATOR ASHFORD: Okay. [LR520]

MARK OVERMAN: Nebraska is not the only state impacted by Colorado marijuana. I've been involved in discussions with sheriffs and county attorneys in other states that border Colorado, and everyone is seeing the same thing. Colorado is now the primary source for marijuana. It is very potent and use is increasing. In June, I attended a meeting in Missouri with law enforcement executives from nine Midwestern states, and they're all listed there. I won't read them. All of those states are seeing significant quantities of Colorado marijuana. For those that say we should just legalize it, we now have some alarming data showing what happens when you do. And I can supply all of this data to the committee in electronic, and we have a hard copy too. According to statistics released by Rocky Mountain HIDTA, the High Intensity Drug Trafficking Area, and this was released in August of 2014, marijuana involvement in traffic fatalities has more than doubled since 2007 to over 16 percent in 2012. Try telling those families that marijuana never killed anyone. Youth marijuana use, age 12 to 17, used in the past month in Colorado is 39 percent higher than the national average. Adult marijuana use in Colorado has increased 36 percent since the commercialization of medical marijuana in 2009, and adult marijuana use in Colorado is 51 percent higher than the national average. From 2011 to 2013, Colorado has seen a 57 percent increase in emergency room visits related to marijuana, and the percent of all hospitalizations related to marijuana increased 91 percent from 2008 to 2013. Marijuana-related exposures of children age 0 to 5 has increased 268 percent since 2010, with Colorado now at triple the national average. Colorado marijuana interdiction seizures destined for other states have increased 397 percent since 2008 and have taken place in 40 other states. Colorado's governor and attorney general are both publicly opposed to marijuana legalization. During the governor's conference earlier this year, Governor Hickenlooper talked about the issue as "our experiment," and urged other governors to not take that path. We believe that what Colorado has done is illegal and unconstitutional. We believe the state of Nebraska and other states should bring legal action against

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Colorado. Their legalization of marijuana is in direct conflict with the Controlled Substances Act. It also conflicts with numerous other federal laws, federal law enforcement agency mandates, as well as international treaties and trade agreements signed by the United States. We believe it is unconstitutional under the supremacy and preemption clauses of the U.S. Constitution. Thank you, and I'd be happy to answer any questions. [LR520]

SENATOR ASHFORD: Thanks, Mark. Any...yes, Senator McGill, and Senator Coash. [LR520]

SENATOR MCGILL: I feel almost naive asking this question, but how do you know where it's coming from? [LR520]

MARK OVERMAN: We know where it's coming from because of... [LR520]

SENATOR MCGILL: I guess now it's got a stamp on it probably but... [LR520]

MARK OVERMAN: We identify Colorado marijuana through a couple ways: primarily through its packaging, number one. [LR520]

SENATOR MCGILL: Does it say "made in Colorado"? (Laugh) [LR520]

MARK OVERMAN: Oh...oh, no, it gives the name of the dispensary that sells it. [LR520]

SENATOR MCGILL: Oh, okay. [LR520]

MARK OVERMAN: I mean it's labeled. They're proud of it. It's labeled. We did a search warrant in my county where we developed some probable cause to get into a house and we seized a bunch of this stuff. It's all labeled. It's all packaged. It's like commercially packaged. It's not what we would typically find in drug enforcement when it's just in

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some Baggie. It's commercially packaged. It's labeled. It has prices on it. It has the names on it. And the other way that we determine it, Senator, is that the people tell us. We talk to these folks. It's not purely an adversarial thing when we encounter these folks. We say, okay, well, we caught you and we start writing them a ticket. We start having a conversation: Yeah, where did you get this stuff. They say, well, got it over in Colorado, I was in Denver or wherever. That's how we determine it. If we can't determine through their statement or through packaging, we do not attribute it to Colorado. [LR520]

SENATOR MCGILL: Okay. [LR520]

MARK OVERMAN: We just say it's unknown. [LR520]

SENATOR MCGILL: Okay. Thank you. [LR520]

SENATOR ASHFORD: Thank you, Senator. Senator Coash. [LR520]

SENATOR COASH: Thank you, Sheriff. I'm still trying to get my head and hands wrapped around the "who's" of what you're dealing with. Are we...are you seeing more of your own residents from your own county that you're having to deal with, because that's a treatment problem. They still live in that community. They, you know, if they need treatment or it's deemed through the judicial process they need it, then that becomes a county expense, versus somebody who's passing through gets caught. That's a different kind of expenses. So I'm trying to figure out who are the...who are the folks that are coming through your county that your law enforcement agents are catching. [LR520]

MARK OVERMAN: It's a little bit of everything, but I'd say mostly what we catch through most of what we do is local folks and they have Colorado marijuana now. Because it's so potent, that's where they go to get it. It's easy to buy. Can walk in off the street and

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buy it. Although Colorado says you can't buy more than this much, there's no way to track that. There's all these dispensaries. You can walk in and buy an ounce here or an ounce there. And so what we are seeing is people with a bit of entrepreneurial spirit gathering some money from their pals and making a trip over to Colorado and buying it and coming back and selling it. And so we, I mean it is not just transients, not by far. But we...the marijuana that we see now, which is a significant amount, it's winding up in the hands of 14-year-olds up in the northwest part of Nebraska, and it's Colorado pot.

[LR520]

SENATOR COASH: Thank you. [LR520]

SENATOR ASHFORD: Yes, Senator Davis. [LR520]

SENATOR DAVIS: Thank you very much for coming. I appreciate your testimony.

[LR520]

MARK OVERMAN: Thank you, Senator. [LR520]

SENATOR DAVIS: It's very good. So we've had the legalization of recreational. We had the medical before that. So are you able to sort of address the three periods when it was illegal in Colorado, then during the medical phase, and then now? And can you see a trend line there? [LR520]

MARK OVERMAN: Yes. Yes, Senator, we certainly can. And the best explanation of that is contained in those Rocky Mountain HIDTA reports. There are three of them. They are all publicly available. I have them all available. I can make them electronically available to the committee today. And in fact, we have a hard copy of the most recent one. Our first real heads up was a 2011 or '12 Rocky Mountain HIDTA report. When things changed in Colorado with the court decision in 2010, that really opened up the medical marijuana to allow dispensaries and to allow providers to write a prescription to

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almost anyone they wanted to for virtually any reason. So Colorado now, about more than 90 percent of the people that were getting medical marijuana were not getting it for glaucoma or because they were on some sort of cancer treatment. It was just for pain. And the increase from 19- to 34-year-old people suffering from pain was just astronomical. But when that changed, the Rocky Mountain HIDTA did a report that showed all of the marijuana that was being seized across the country, not just some of these were in Nebraska but it was in a bunch of other states, and that's when it really happened. That's...and it kind of...that was our heads up that this is going on. And then they did a subsequent report. When they...that really opened the floodgates for the marijuana. And then when they had passed Amendment 64, and it didn't take effect for a while, but they passed it and I think it's been about a year. But as far as they were concerned, listen, this stuff is pretty much legal now. We were...certainly there were some cases that our task force was involved in where even though we focus on methamphetamine, we don't ignore marijuana traffickers. When we get information, and we had some information about people that were going over there and buying large amounts, larger amounts, pounds of marijuana from these dispensaries, medical marijuana dispensaries, some of them were very unscrupulous. They'd sell all you wanted. Some of them were probably doing what they were supposed to do. And we had...we used our surveillance assets and we worked with Colorado task forces and we had some impact. They would go down there, they would come back, we would catch them and...but they're still doing it. Now of course it's legal for them to buy it and in a lot of places. There's a lot of venues in Colorado where you can buy that. [LR520]

SENATOR DAVIS: So what kind of a kick up did you then after the legalization?
[LR520]

MARK OVERMAN: Well, it's a steadily...steadily. It's steadily increasing. But like I said, Senator, one of the things that the state could help us with is the...is mandating some additional recordkeeping from the Crime Commission, because, frankly, we're not doing a good job of watching that. We have, in our task force, we have an intelligence analyst.

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She's here with me here today in case there's any questions. But because she was just seeing a lot of this, she started keeping track of this in 2013. But as far as I know, we're the only task force area that's doing that. And so we're just not keeping the records that we should be to really identify what this problem is and how to track it. It's kind of...it kind of caught us all off guard. I would say we didn't realize what the impact was going to be, but in order to measure it we really need to do a better job of tracking it. [LR520]

SENATOR DAVIS: So how many are in your department? [LR520]

MARK OVERMAN: I have 18 full-time deputies. I've got some part-time deputies. I have a few reserves, but they work with another deputy. Our drug task force has ten full-time drug investigators. [LR520]

SENATOR DAVIS: And do you have any idea how much more time you're putting into the marijuana problem than you did a year ago or two years ago? [LR520]

MARK OVERMAN: Well, it's not real significant for us, Senator, because we haven't...we haven't done, as a department, we haven't done anything extra. Where we run across this is just a normal traffic stop. We stop somebody for speeding or some traffic violation and the officer goes up and he sees or, most often, he smells something. You know, one of the things that's good for us, I guess, and bad for the marijuana users is that as the potency goes up, the aroma goes up. So this stuff is very powerful and it's easy to smell. Plus, we live in an area that's more heavily populated than the previous sheriff. And we have four drug dogs in our county. I have one; Scottsbluff PD; Gering PD has one; State Patrol has one that's based in Scotts Bluff County, although he does travel around the whole Panhandle. So we have drug dogs pretty readily available to us. Another thing, Senator, that I would like to address is there seems to be some perception that if you're in western Nebraska and you have less than an ounce of marijuana, you're going to get arrested for that. And we had a meeting last week. None of us believe that's true, none of us. And in fact we had a meeting last week with our

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neighboring task force, CODE Task Force, which is based in North Platte. So this is a lot. We've got 11 counties and they've got more than we do. So pretty much from everything Lexington west, we had all of the...I'd say the sheriffs and a lot of the police chiefs of any significantly sized agency and we asked that question because we've heard that this question came up from this committee: Is anybody making arrests on an infraction? And nobody is. Nobody knows about arrests. And then I know about another meeting that was held with the Sheriffs' Association. Our executive director, Amy Prenda, had a meeting to explore this with Darrell Fisher, the head of the Crime Commission, and Mike Overton, who has a lot to do with statistics, and they said...I talked to her this morning about this and she said that because it's difficult to break down their statistics and how they keep them, they do not believe that there is an increase in arrests due to infractions. [LR520]

SENATOR COASH: What about... [LR520]

SENATOR ASHFORD: Well, they...yeah, Senator Coash. [LR520]

SENATOR COASH: What about misdemeanors, so more than an ounce but less than a pound, with regard to arrests? [LR520]

MARK OVERMAN: I would say if it's more than an ounce, less than a pound, we tend to arrest people. That's not an infraction. That's a misdemeanor. A misdemeanor that takes place in our presence we tend to arrest on. But even, Senator, on issues like that, even if you find less than an ounce, if there is evidence of distribution, that's a felony. Distribution of a controlled substance is a felony. We've made...I mean we've made arrests for less than an ounce when people are selling. So it depends on the circumstances. It depends what you find, depends what the people might say to you. It just depends on what the evidence is. [LR520]

SENATOR COASH: But it would be your testimony that most of the time when you get a

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misdemeanor amount, more than an ounce, less than a pound, most of the time law enforcement is making an arrest? [LR520]

MARK OVERMAN: I think so. [LR520]

SENATOR COASH: Okay. Is that...is that within your discretion? Could you write a ticket for that and send them on their way? [LR520]

MARK OVERMAN: Yes. Yeah, we can write...yeah, I've seen us write a ticket for felonies. [LR520]

SENATOR COASH: Okay. [LR520]

MARK OVERMAN: It depends on the circumstances, Senator. [I've seen that happen. It depends on the circumstances, Senator.]

SENATOR COASH: Sure. But it is... [LR520]

MARK OVERMAN: It depends their...it would also depend, I think, on their connections to the jurisdiction. [LR520]

SENATOR COASH: Can you expound on that? [LR520]

MARK OVERMAN: Well, if you get somebody that's a transient coming through your jurisdiction then you want them to post a bond to guarantee their...to ensure their appearance. [LR520]

SENATOR COASH: So you arrest them. [LR520]

MARK OVERMAN: Yeah, on misdemeanors, we tend to arrest them,... [LR520]

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SENATOR COASH: But... [LR520]

MARK OVERMAN: ...misdemeanors that occur in our presence, yes. [LR520]

SENATOR COASH: But the misdemeanor is still discretionary on law enforcement's part. You can have all other circumstances in there. It's.... [LR520]

MARK OVERMAN: I have seen people released on felonies. [LR520]

SENATOR COASH: Okay. [LR520]

MARK OVERMAN: I have. It depends on the circumstances. [LR520]

SENATOR COASH: Okay. [LR520]

SENATOR ASHFORD: Senator McGill. [LR520]

SENATOR MCGILL: I was just going to ask the question I asked the previous sheriff. Are you seeing an increase in any other drugs coming into the state in tandem with this? [LR520]

MARK OVERMAN: You know, one thing I'll tell you, Senator McGill, our...we've seen a marked increased in methamphetamine, and I don't know if that relates to the Colorado... [LR520]

SENATOR MCGILL: Yeah. [LR520]

MARK OVERMAN: ...marijuana. But I will tell you this. Our task force, we did an OCDETF investigation, which is...that stands for Organized Crime Drug Enforcement

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Task Force. That is as big as federal drug investigations get. We did it with the neighboring task force, the CODE Task Force, and the FBI, and the U.S. Attorney's Office. Those entities received a major award from Midwest HIDTA for that investigation and...because we knocked off a Mexican cartel. And we have pretty much had them present in our jurisdiction, in the Nebraska Panhandle. First one of those I got involved with was 1991 and we have had them pretty much constantly ever since. And the Mexican...it was titled "Mexican C," they're all titled, they get a title for some reason or another, but that started with a controlled purchase of less than an ounce of Colorado marijuana in Big Springs, Nebraska. That's what kicked off that entire investigation. And within very short order we knew that we were on to the Mexican cartel. [LR520]

SENATOR ASHFORD: Yeah, just a couple comments, and that was a significant event that was...that you...the cartel bust that you're referring to is a major event and an example of coordination. It was incredible. So I'm aware of that. As far as the Crime Commission is concerned, I think you're right and the next Legislature can deal with that or deal with Mike Overton. They can create a database to address that information, and should quite easily. And Mike is good. He knows what he's doing. [LR520]

MARK OVERMAN: Yes, he is. He's excellent. [LR520]

SENATOR ASHFORD: And so that's a good idea. It does raise the question of what do you do federally when you have a federal law that prohibits this activity, and then you have a border state that's violating, technically, violating federal law. Local law enforcement is paying for the cost and you're, in effect, you're sort of indirectly, even though you're enforcing local law, you are also reflecting the federal law which is...in your enforcement, which is...prohibits what Colorado is doing. [LR520]

MARK OVERMAN: Yes, sir. [LR520]

SENATOR ASHFORD: So it's somewhat of a big lack of coordination between the feds

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and what you're trying to do. [LR520]

MARK OVERMAN: Yes, sir, it is. [LR520]

SENATOR ASHFORD: Yeah. And you don't have to say any more, but. (Laughter)
[LR520]

MARK OVERMAN: I think you're going to hear, especially from some Deuel County
authorities,... [LR520]

SENATOR ASHFORD: Okay. [LR520]

MARK OVERMAN: ...about the very significant financial impact to a county. [LR520]

SENATOR ASHFORD: Right. Right, and it seems to me, I mean if you're going to have
to enforce these, what is, in effect, a federal law, locally without any financial
reimbursement, it's tough. It's tough to ask you to do that. And so I guess the conclusion
from your testimony is, yes, there is more, there's larger amounts of marijuana in your
county and other counties. There's concern and fear that it could...that a cartel much
like the meth case could arise in the future, all these things. It's not going to be good
news, does not come from this. There's no good news that comes from bringing a
substance from Colorado that's legal there and illegal here and illegal nationally or
federally into our state. [LR520]

MARK OVERMAN: Yes, Senator, it is. [LR520]

SENATOR ASHFORD: Would that be a fair comment? [LR520]

MARK OVERMAN: Yes, sir, I'd say that's fair. [LR520]

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SENATOR ASHFORD: Okay. All right. Thank you very much, Sheriff. [LR520]

SENATOR DAVIS: One more question, Brad,... [LR520]

SENATOR ASHFORD: Yeah, I'm sorry. Senator Davis. [LR520]

SENATOR DAVIS: ...or two, I guess. We put together some data from the Crime Commission on the number of people in your jails. So in 2012 there were around 1,883 and in 2013, 2,379. So that's a 500...about 500 additional. Is that drug related or is there some other issue going on in Scotts Bluff County? [LR520]

MARK OVERMAN: Part of the issue, and I would not say that that's all drug related. I mean our drug arrests are, I believe, higher, but not...I don't think you can attribute all of that. And I'm not sure how they measure this. One of the things that...in Scotts Bluff County is we do hold federal prisoners. They're not our local charges. We hold them. We have a contract with the U.S. Marshal's Office in Wyoming. Cheyenne is 100 miles from us and so on any given day we have 40 to 60. [LR520]

SENATOR DAVIS: So that could explain. [LR520]

MARK OVERMAN: So that could explain that. That could explain that, that sharp increase, and the feds pay us per day per prisoner. We're not the only jail in Nebraska that does that. There's quite a few. [LR520]

SENATOR DAVIS: And so then the last question I guess would be I'm sure a lot of times when you make an arrest there might be a DUI infraction along with marijuana. [LR520]

MARK OVERMAN: Yes, sir. [LR520]

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SENATOR DAVIS: Would that be true? [LR520]

MARK OVERMAN: Yes. [LR520]

SENATOR DAVIS: Any idea about the percentage of that? [LR520]

MARK OVERMAN: No, I wouldn't have those statistics. But a lot of times, when we arrest someone for one violation, an arrest triggers a search. It's a pat-down search. It's a search of their vehicle. Could be incident to arrest, could be an inventory search, or it could be based on the automobile exception and probable cause. And once you start searching, you tend to find things. A lot of times we find things that we didn't know were there. That's how we find a lot of drugs, weapons. [LR520]

SENATOR DAVIS: Thank you. [LR520]

SENATOR ASHFORD: Thank you. Thank you, Sheriff. [LR520]

MARK OVERMAN: Thank you. [LR520]

SENATOR ASHFORD: Okay. Who would like to come up? Do we have some...do we have a county attorney here? Yes, I know we have a county attorney here. Why don't we go over here and then back, in the back. [LR520]

PAUL SCHAUB: Members of the committee, my name is Paul Schaub. I serve as county attorney for both Cheyenne County and Deuel County. Both of those counties border on Colorado. Several issues have already been discussed, but I want to point out a few things. First of all, I've served as county attorney in Cheyenne County for approximately 20 years. I've been serving as county attorney in Deuel County for two years. It's basically a two-year project. I also occasionally am appointed as special prosecutor in the surrounding counties, and several of those cases have involved

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driver-impaired matters. And some of the counties that I have prosecuted in or am prosecuting in include Scotts Bluff County, Box Butte County, and Kimball. And that leads to what I believe is a very important issue. I mean we've talked about the specific harms; about the costs, the added costs to the jail budgets, law enforcement budgets. But DUID is a matter that concerns me greatly. In order to prove a DUID case, it's almost essential that you have a drug recognition expert, and we do not have many drug recognition experts in the area. It's a resource that we need more of. It's a time-intensive resource, and by that I mean when somebody is stopped and they're suspected to have been driving under the influence of drugs, we have to call in a DRE, and that takes...for example, there was a case in Kimball not too long ago and it took about 45 minutes to an hour for a DRE. Closest one at that time was in Scottsbluff. And the reason I'm focusing on this is because I suspect at some time in the future there's going to be an accident, a serious accident, and if you take a look at the history of Cheyenne County, especially within the last year, we have had, well, probably the most serious accident in history of that county. But I am concerned that we are going to have an accident involving the use of drugs. And if we don't have the resources available, at some point we're going to have to address to the families of these victims why was it that we didn't have those resources available. Another point that I want to focus on, I know that one of the questions you had in the beginning was solutions; let's focus on, to the extent possible, what solutions are available. I'm in favor of increasing the fine. In saying that, I realize that fines, when they're collected and disbursed according to the constitution, they go to the schools. And so that's going to better the schools. It's not necessarily going to directly reimburse law enforcement for all of its costs, added costs because of their added work. I would also recommend that you take a look at adjusting the minimum amount of substance, specifically marijuana, when defining a dealer for the purpose of prosecution under the drug tax stamp charge. Another one that is alluded to is seriously consider entering into a lawsuit, joining with other states, and one of the bases would be that under the Interstate Commerce Clause, if there's a serious disruption in interstate commerce that results in a detriment to one state then that can give you a basis for proceeding forward. [LR520]

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SENATOR ASHFORD: Well, and in this case you have an illegal...under federal law you have actually an illegal substance being engaged in interstate commerce, which... [LR520]

PAUL SCHAUB: Right. [LR520]

SENATOR ASHFORD: ...to your point, I guess. [LR520]

PAUL SCHAUB: And then in addition to added resources to allow us to have additional DREs, I would suggest additional resources for drug dogs as well. You know it is interesting how when you take a look at funding available from the state, funding available from the federal government that you have funding available for certain purposes--preventing teens from smoking, seat belt enforcement--but we don't have in place the availability of funding for these local law enforcement for these purposes. [LR520]

SENATOR ASHFORD: That's good comments. Senator Seiler. [LR520]

SENATOR SEILER: Yes. Tell me a little bit about the practices of judges out here. If you have a case that doesn't quite bump to a felony, are they giving one-year sentences to the state pen quite often? [LR520]

PAUL SCHAUB: In those...well, there's the felonies, there's the misdemeanors. In the felony cases, and that would include possession of marijuana weighing one pound or more, and then there's other marijuana-related offenses, if you're talking about a possession of marijuana case, it may result in probation, it may result in prison time. But there's so many factors that go into that with the information provided, the presentence investigation report. But when you are talking about offenses involving marijuana distribution or possession with intent to distribute, typically then the only question is how

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much...how much time that person is going to be spending in prison. [LR520]

SENATOR SEILER: Right. Are they hitting them extra hard or...I want to know if you're helping contribute to the overcrowding. (Laugh) [LR520]

PAUL SCHAUB: Oh. [LR520]

SENATOR ASHFORD: Oh my. (Laughter) [LR520]

PAUL SCHAUB: When, you know, some of these cases that are coming through, there was one in Deuel County not too long ago where we, you know, we talked about the packaging, and it was patently obvious that this...that these substances came from a facility in Colorado. [LR520]

SENATOR DAVIS: Sir. Sir, can you hold your mike up a little. [LR520]

PAUL SCHAUB: I'm sorry...in Colorado. And so I wouldn't say that the sentences are increasing just because of what's happening in Colorado. If those facts were presented to us in the past with the same judges, I think we would have the same sentences. [LR520]

SENATOR SEILER: Thank you. I wanted that on the record. That's what I thought was happening. [LR520]

SENATOR ASHFORD: Thank you. Thanks. I'm sorry. AI. [LR520]

SENATOR DAVIS: Can you...you're working with Deuel County. [LR520]

PAUL SCHAUB: Yes. [LR520]

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SENATOR DAVIS: But you've only been doing that two years? [LR520]

PAUL SCHAUB: Right. [LR520]

SENATOR DAVIS: So can you talk a little bit about the increased caseload and the ramifications to the county in terms of costs? [LR520]

PAUL SCHAUB: And for that purpose I have brought Jon Stellar. He's my deputy and he actually does the bulk of the drug prosecutions in that county. He's also the unopposed candidate for county attorney. But he has some statistics. I can tell you that it looks like we're on track as far as the number of cases being almost triple of what they were about two or three years ago. [LR520]

SENATOR ASHFORD: Okay. [LR520]

SENATOR DAVIS: What about drug courts? Do you have any comment about drug courts as an alternative to incarceration? [LR520]

PAUL SCHAUB: For a variety of reasons, Cheyenne County had a drug court in the past and I know that in just in discussions I've had with, for instance, in the criminal justice system, there is not an interest in reviving that program. There may be sometime in the not too distant future that I'll consider some type of adult diversion program, but I assure you that when we're talking about felony offenses involving marijuana and the potential harms with regard to the use of marijuana, I would not consider that in a diversion program. [LR520]

SENATOR ASHFORD: Thanks. [LR520]

SENATOR DAVIS: Thank you. [LR520]

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PAUL SCHAUB: Thank you. [LR520]

SENATOR ASHFORD: Okay. Think we have a gentleman in the back that had some information about felony TCH (sic), all that stuff. And then I want to...oh, I'm sorry. Okay, well, we'll go here and then we'll go to the other...oh, I'm sorry, Mark, did you have something more or...? [LR520]

SENATOR CHRISTENSEN: No. [LR520]

SENATOR ASHFORD: Okay. You're going to come up next then. Okay, thanks. All right. [LR520]

RANDY FAIR: Good afternoon. My name is Randy Fair. I'm the Keith County Attorney here. I do have some specific statistics probably. I'm probably less inclined to say that we need to increase a significant amount of penalties. Quite frankly, that's what costs my county the most. My staff would prefer that an infraction is waivable. Right now, we have to set a court date for those people when they get ticketed. We have to bring them in. That's what costs us our time, our efforts. In 2012, in terms of tickets, we... [LR520]

SENATOR CHRISTENSEN: How about the mike? [LR520]

RANDY FAIR: Oh, sorry. In 2012, and we started looking these things up a couple of years ago to try to figure out exactly how many charges...these are not arrests. These are just a total of everything; 2012, by best determinations, we had about 46, meaning something significant involving marijuana; in 2013 it was 62; in 2014 it's 126. Part of that is we equate that to the lake. Obviously, with Lake McConaughy we get a significant amount of people here. If you want to help me, make more Game and Parks' people come out here during holiday weekends. That's where we get our problems. But I understand, we're not big, and I'm probably less inclined than the others...I'll go on record of saying this, I'm sure it will probably hurt me later, but, look, I don't...the

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increased costs, you're, to a certain degree, dealing with the wrong people. Your drivers of marijuana, when they're driving 5 to 20 pounds, are getting paid upwards of \$5,000 and \$8,000 a turn. Those are not your dealers, necessarily. They are a lot, but that's what we see here in our county. And we're not profiling people; there's been a lot of discussion about that and I have...we look at Facebook to look at what the people are talking about because we have a number of people who are big into legalizing marijuana in our county. We don't profile people. I don't think I've seen one case of that. I did defense work here for the past ten years; I did three years in Colorado. I've been the county attorney for four. You don't see that with any of these individuals. That's just a misnomer from other states, maybe. They're just pulling people over for the...traffic. Quite frankly, if they pull someone over for something that isn't justified, every one of my officers understands if it gets suppressed or doesn't get prosecuted. There's not been, I wouldn't say, an increase in other drugs in the sense of just using them. We have had some significant increases in methamphetamine, but I think that's part of just the overall use of methamphetamine nationally. With regard to that, we don't arrest anyone for less than an ounce. It's an infraction; it's a \$300 fine. I think, quite frankly, the reason they only have a court date is because for a second offense it's a \$600 fine and the judge starts giving them two days in jail. The drug dog, someone mentioned in Keith County, we used to have a drug dog, but he wasn't technically certified. For us to have a drug dog, it has to come out of North Platte. It is a hassle. They did a checkpoint this weekend, and I think we picked up 13 new charges over the weekend all related to marijuana. We have to use a drug dog out of North Platte for that. If you want to help with...I'm in agreement with Mr. Schaub concerning DUIDs. The DRE--using a drug recognition expert is very difficult. If he's not on duty, then we have to get him out of bed, get him there; get them there in time to do this before it's been so long since a person has been driving. I think it would help if you look at Colorado statutes regarding driving under the influence of drugs. They have it by reference to nanograms of THC. It's based upon what's in your blood. So if you flow over to a testing procedure, be a lot easier, I know for me, than having somebody have to be beaten up on the stand with regard to what he saw this particular driver, how impaired they were, etcetera, if you

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looked at any of those possibilities. The...all packaging that comes out of Colorado, if it is bought at a store, has the package of the store. It also has the marijuana Department of Revenue stamp on it. You can get on-line and see what that is. It's similar to any other governmental institution. You can buy a quarter of an ounce of marijuana if you're from out of state. You have to be over 21. I actually have all of the arrests, and we have been keeping track since...beginning this year as to where these individuals come from. While we have our standard people who are using marijuana in our county that we always have, there are a significant amount of people, quite frankly, from other states. But I would tell you, some of those people are...this weekend I had somebody, I can't remember how many edibles, individually packaged, dozens. They came to Colorado to buy it because they have multiple sclerosis. And we see that. We see these people coming and driving through. So it's not your typical...well, we see the, quite frankly, people who aren't going to go anywhere in their lives, who are drug users all the time and don't have a job, etcetera. We've also seen an increase of people who are over 30, over 40, coming through our county to get pulled over because they have these drugs and they're getting them because they live in some other state and they think it's going to help them. Right or wrong, that's just what we see. As it relates to the weights on the edibles, if you have a large number of edibles, that can be prosecuted as a distribution case. But I will tell you, there's no way that we can weigh that. I'm kind of against the concept of trying to, because I don't know how you would extract the weight of the actual marijuana with regard to the weight of the edibles. You know, if I have...make a cake and I put in one ounce of marijuana, you weigh the cake, it's going to be significantly different than what we have there. So I think the problem is going to be...if you're going to do that, you're going to have to increase money that you give to me to prosecute these people because it's going to be significant because edibles are just, quite frankly, a lot easier for people to take. They take it in the form of hash oil. And when I say "edibles," all the stuff that...it's just the term for everything they eat, everything that's not smoked, when you talk about that. You probably need to look at something that's called "shatter." If you haven't heard of that, it's a different derivative of how they make marijuana; it's in a different form. And there's stuff called "honey" which

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is a different type of way that they're cooking it up for purposes of using and smoking it. And so those are things that if we're going to start defining, I would hope that you would do everything correctly the first time and not make changes every single year to how we're going to try to do this. It's been my experience the thing that probably hurts people most is to take their money, take their cars. You want to help me? Change the law that says I get to prosecute those people and I also take their vehicle or would decide to take their money. If they've got \$20,000 and they've got less than a pound of marijuana, I'm probably going to opt to try to take the money to use in my county to buy equipment for my undercover law enforcement, to use that money through the county commissioners so they can, quite frankly, absorb their costs. But that would be helpful. That's about it. I'm going to owe my wife dinner or something because she swore that I wouldn't be able to sit still and not talk. So, unfortunately, she has won that bet. (Laughter) So, yeah, you know, Ken. Thank you. Questions for me? And I probably went through a lot of things. I tried to attach on what you guys have questioned other individuals about, but... [LR520]

SENATOR ASHFORD: That was very helpful, thanks. [LR520]

SENATOR MCGILL: Um-hum, that was very good. You brought a different perspective to this, so I appreciate that. [LR520]

SENATOR DAVIS: I do have a couple of questions. [LR520]

SENATOR ASHFORD: Senator Davis. [LR520]

SENATOR DAVIS: I didn't want to repeat everything, but...so you had a significant increase from 60-some to 120-some arrests? [LR520]

RANDY FAIR: In 2012, 46, and now we're talking tickets, just strictly offenses involving marijuana. One of my staff members here, she can verify that because they're the ones

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that keep track of that. In 2013, it was 62. To date, 2014, it was 126. Part of that is, we had a huge increase of travelers to Lake McConaughy this year. Our 4th of July, we had 180,000 people, I think. And we just get swamped that whole weekend. Our officers, Game and Parks' people are running rampant. It's tough for them to manage what we have without, obviously, trying to touch on every single minor in possession or marijuana. [LR520]

SENATOR DAVIS: So, when you have that influx at the lake, I don't know, I guess what I want to ask first is, so you have this increase. How many of these are ending up going through the full court system? [LR520]

RANDY FAIR: Well, if it's possession of less than an ounce, quite frankly, we tell them pay the \$300 fine and court costs, because that's what their...is going to happen unless I can find that they had a previous offense and can enhance that penalty. But if they're from Colorado, there is no previous offense. And so generally, those individuals, if they contact me, they're not going to show up for court, we're going to do that with a waiver system so they don't even have to...because I don't want to clog up my court system with...quite frankly, I'd rather spend my time on methamphetamine and people beating each other up than I would to have 15 people showing up from Colorado who had a party out here and we charged everybody with possession of marijuana less than an ounce. But they don't even hide it, I mean, they're...you hear the officers, it's potent, you can smell it. At the lake they don't hide it. Officers walk right up, they'll have it sitting on a table. And they act...to a certain degree, we've had cases where it doesn't even phase them that it's apparent that they've got marijuana out in the open. [LR520]

SENATOR DAVIS: And is...is all the product that's seized, is it definitely raised in Colorado marijuana? [LR520]

RANDY FAIR: Majority of it, and they will tell you. I mean, if they know they're going to get a ticket, it's an infraction, they know it's going to be...once they see it and they see

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what the penalty is and it's explained to them it's a \$300 fine, you need to show up for court, etcetera. A lot of times they're going to tell you, unless they have a significant amount that they're driving, you know, 10, 15, 20 pounds across to head off to Wisconsin or Illinois or Iowa, then usually they're going to...but it's labeled. I mean, it's...if you guys have not got...get on-line and look at it. It's labeled, it's free advertising for these guys. If you get on any blog or Web site regarding marijuana in Colorado, you're going to see articles on which place sells good marijuana and which place sells bad marijuana; which edibles are more consistent; which places are the places you should shop. This is a commercial commodity where people are making millions of dollars. They're marking it because that's free advertising. [LR520]

SENATOR DAVIS: An Angie's List of marijuana dealers. [LR520]

RANDY FAIR: There you go. [LR520]

SENATOR DAVIS: So are you telling me...isn't it already the law that you can seize the vehicle? [LR520]

RANDY FAIR: There is an issue with regard to double jeopardy in the state of Colorado. And I can get the full parameters on it, but there's an issue with regard to...I don't know if Paul is aware of how that works: if you...and the way I looked at it, it's my understand that if you...if they come into a civil case and I'm seizing their items and they plead guilty...or allow the item to be taken and the factual basis is provided, then I have, initially, invoked the double jeopardy rule and I cannot prosecute them on a criminal cite. Correct? And the problem with that is, understand that even though that's a civil forfeiture of their item, I can't charge them criminally on the other side. And I can't tell you how that...when that was or how that became. It was before my time. [LR520]

_____ : It was a Supreme Court decision. [LR520]

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_____ : Right. [LR520]

SENATOR SEILER: Supreme Court case. [LR520]

RANDY FAIR: Yeah, so they're using that as double jeopardy, which...so, yeah. [LR520]

SENATOR DAVIS: But I thought when a police officer seized a vehicle that was obviously either transporting lots of cash or whatever, if you had suspicion that that was drug-related funding and/or vehicle, that could be confiscated. [LR520]

RANDY FAIR: Correct. But from a state level, if I confiscated on the state level...if I confiscated and I hold...and I take that money and put it in the drug fund to be used to help law enforcement pay for things, I cannot criminally prosecute that person. [LR520]

SENATOR DAVIS: Really. Well, that's interesting. [LR520]

SENATOR ASHFORD: Okay. [LR520]

RANDY FAIR: So if you want me to keep the statistics, you want me to keep all this information, you're going to have to provide us with a lot more money. I'm not trying to be mean. It's just because I'm not going to go to my county commissioners and say, hey, I know I just asked you for a lot of money to support my budget and the work we do, and now I need more money so someone can keep statistics for me. I'm not all that in favor of that, quite honestly. [LR520]

SENATOR ASHFORD: All right, thanks. [LR520]

RANDY FAIR: Thank you. [LR520]

SENATOR ASHFORD: Sheriff. [LR520]

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JOHN JENSON: Thank you for having us down here. My name is John Jenson. I'm the sheriff out of Cheyenne County. My last name is spelled J-e-n-s-o-n. I'm going to be real brief because a lot of...a lot has been said so far this afternoon. I think we can shed some light on a few things. I, too, am attached to the WING Drug Task Force as the vice chair. And we see a lot of things, both locally, as being a border state to Colorado, and also through the Panhandle. I provided a chart that I sent to Senator Davis when the e-mail came out about the study and if you look at that chart, I believe that the steady rise started to show in 2010, which is coincidental to the same time that the medical marijuana came out. Now those are just straight arrests that come into the jail, so more than an ounce, all the way up to distribution charges. They're not specified out. There was a question that came out of a meeting that you guys had about the possession less than an ounce being arrested. One thing that we are seeing, I talked with my judges about this, or at least my county judge about this, if the ones that are issued a citation to waive...they're not paying the citation, they refuse to pay the citation, but they're coming back and serving that time out because they're allotted \$90 a day to serve time out. Well, they're really coming back for a citation of marijuana less than an ounce. So I think there is a small percent of that that does happen. We're seeing an increase in that since 2010 at least. The HIDTA report that we have referred to, I would appreciate everybody on this committee look at that because it is very intense. It goes in and there are facts that are gathered from several different colleges, institutions that really can provide you some insight to what, potentially, is coming at us and what we're looking at. The one thing I'm kind of surprised to hear a little bit, that this is only a western Nebraska problem. I know for a fact...I've talked to sheriffs across the state, they're having the same problem, it's just they have other things to deal with; such as the sheriff out of Omaha. He may have a few more homicides per year than I do. But it is a problem because we also have had reports recently of grows in Nebraska that's going back to Colorado to be sold. It's back for the greed. People are trading their morals and values for greed. And I appreciate the time and effort you guys are putting into this to make sure that doesn't happen. I do believe in the two-fold method. I think we need to

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increase our fines and punishment and the visibility all at the same time. There's a balance in there that we need to find. I'm not saying that I want 20 troopers in my county picking up major events to increase my jail budget, but I think it does show a message that Nebraskans, specifically us out there, have a zero tolerance for this. And I think it will show an impact. We're seeing that now. The cartel, we briefly talked about that. Anybody who does not believe that we have cartel in this area, your head is buried somewhere in the sand, because it is a factual case; it was a big case down here in the Ogallala area. It was one of...my drug investigator was part of that. It's a long case. And again, it started with what? It started with two buys of marijuana from Colorado that led into guns, methamphetamine. Yes, we want to go after those crimes. Please don't look at marijuana as just marijuana, because it does lead to many things. And I know that you all have looked into that, have seen that. And I would, respectfully, that you guys keep going forward on that. The part about the profiling, yeah, we don't profile. That's something that we can't do. If we do it, the case gets thrown out. Most of our enforcement, at least in my county--I don't have my guys working the interstate, my guys are more looking into and supporting the task force--is to find the ones that are coming into our community with those drugs, reselling them. We've had two warrants in the last few days: one of a juvenile, 18 years old, selling to his schoolmates marijuana, Colorado. The one just...later that afternoon was another one to where he was...he admitted, he did the interview this morning, admitted to coming back in and selling it to 15 to 18 other people in our community. Those are the ones that we are trying to target, we are going after for that distribution, because we understand what goes along with it. It's not just the marijuana that's coming. There's prescription pills; there's methamphetamine is on a steady rise. Which if you look at that chart I sent to Senator Davis, it does kind of mirror that when one drugs goes up, the other drugs does too, especially marijuana and meth. So I would encourage the committee to look at that. And I'll take questions if there are any. [LR520]

SENATOR ASHFORD: Yes, Senator Seiler. [LR520]

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SENATOR SEILER: Sheriff, are you keeping statistics on how much your costs, of your jail costs, like I walk through the other sheriff with? Are we...you know, I get county board members cornering me every time saying--hey, you're sending all these mandates down, our budget is going off the chart; our real estate people are screaming to high heaven the taxes are too much. Can we document through the uniformed sheriffs across the county as to how much are budgets are going up related to these type of programs? [LR520]

JOHN JENSON: You can. And there are ways that we're trying to do it now. I think there...if you go back to the Crime Commission, look at our jail status report, which I've seen some copies of that I believe that you guys have looked at, I think if we add some information to that, it would be real simple and it would be unanimous across the state of Nebraska. Everybody would be sharing the same information that way. To me that would be the easiest and fastest way to show that, through that. And I think it would work. And I think you would be able to see where your problems are at right away with that. [LR520]

SENATOR SEILER: Thank you very much. [LR520]

SENATOR ASHFORD: Okay. Yeah, and I think that something can be done without legislation action, you know, if we talk to the Crime Commission. And maybe, as a result of this hearing, what we might think about doing is getting some consensus about what...how these data points...get with Mike Overton, figure out what data points we need to compare and really start now getting that information out there. I would think...they are good. I agree with you. They do a good job. In fact, it's interesting, when we look at all these various issues we look at in the Judiciary Committee, when we get outside people coming in looking at our justice system, what we hear...I hear every time is you have, compared to other states, the Crime Commission. Really Mike Overton, the work he does, is really second to none in the country. It's just a matter of agreeing on, sort of, what the data points are that we need to look into. But good work. Thank you.

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[LR520]

JOHN JENSON: That's excellent (inaudible). [LR520]

SENATOR ASHFORD: Yeah, Senator Davis. [LR520]

SENATOR DAVIS: Sheriff, can you just talk a little about...a little more in-depth, I guess, about the increase in number of arrests that you might have had since legalization.
[LR520]

JOHN JENSON: Well, in Cheyenne County it's several fold. It's not only the increase that we're seeing on the interstate, there's also...we also have the north/south highway of 385 which causes us concerns in transport. It's bigger than just...and you'll see in the HIDTA report, of all the places that marijuana goes to in the United States. So our increase is not only what's coming into our community, but it is increasing on the roads. I think one thing that you need to think about and look into, you're not going to see 300- or 600- or a 1,000-pound loads like you used to. You may still pick those up, but there's no need to put that money up-front. You can go over there and buy 20 pounds and do the same thing if you want to go over there and go skiing every weekend. So I think the amount is there, but it's in several trips instead of the big loads like we used to find. I agree with some of the comments that were made. I think we need to go after these people any way we possibly can. The costs should go back on to them. You know, whether it's through fines and punishments, whether it's through...higher fines, eventually they're going to figure it out. I hate to do this to Kansas, but if it makes them drive across and around Nebraska, is that really a bad thing? Are we losing that much out of it? I don't think we are. I think it's actually going to save us money by doing that. The increase that we're seeing...my budget, my jail budget, yeah, it's tremendously in bad shape. I can't attribute that because up to this point in the last year, nobody has really taken this serious by looking into this problem and nobody is really had good, hard, solid facts up till now. Now everybody is looking at it going, oh well, we need to

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watch all of this. And we do. But we haven't got it up to this point. So to say my jail budget is double what it was, absolutely. But I also had three homicide cases over the last couple years. We had a nasty wreck on the interstate which put some people in prison for a while. So there are other contributing circumstances to it. About 28 percent of my jail for last year was drug-related offenses. And I think that's...I believe that was in that...I sent with you. [LR520]

SENATOR DAVIS: I think it was. And are edibles a big deal to you? [LR520]

JOHN JENSON: Edibles, we are starting to see those locally. In fact, one of the warrants we just had was for that, this recent one that interviewed out this morning. Yeah, they are a huge deal. And you're looking at THC levels of 20 and 30 percent. This is not the ditch weed of the '70s and I don't know that people realize that. They keep comparing it to...oh well, you know, we decriminalized marijuana back in the '70s. We did, but it was not even close to being the same marijuana and product as what we're looking at today. Look at Colorado, they have people that's dying because they're eating a truffle and they should only have had a small portion of that. That's a problem that they didn't see. I think the decriminalization maybe hurt us now. [LR520]

SENATOR DAVIS: How far are you from Sedgwick for example? [LR520]

JOHN JENSON: Back roads, about 45 minutes. [LR520]

SENATOR DAVIS: Thank you. [LR520]

SENATOR ASHFORD: Thanks, Sheriff. [LR520]

JOHN JENSON: Thank you. [LR520]

SENATOR ASHFORD: Probation is next. [LR520]

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LONNIE FOLCHERT: Good afternoon. My name is Lonnie Folchert, F-o-l-c-h-e-r-t, and I'm the chief probation officer for District 11 Probation which covers North Platte, Lexington, McCook, Ogallala, Imperial. I was asked to come to this hearing today to testify about increase in probation work here in Keith County. I visited with the local judge and Randy Fair, who just testified to the panel about Keith County. We have not seen an increase in probation folks because of the legalization of marijuana in Colorado because it's...most the things we're seeing here are, like Randy said, related to the lake or infractions; they're being fined and they go on their way. You know, Senator Davis asked about drug court. I'll take an opportunity to speak on that. In this district we have two drug courts. Judge Doyle out of Dawson County runs a drug court in Lexington. And we've now expanded to North Platte. And I will tell you that it has exploded in North Platte. We now have a drug court officer there. We also have SSAS in Lexington and we would like to expand that out to North Platte. And with SSAS comes a reporting center. And those of you who... [LR520]

SENATOR ASHFORD: Well, don't you have one now? Aren't you getting one under LB907? [LR520]

LONNIE FOLCHERT: In Dawson County, that has expanded out to two SSAS officers. [LR520]

SENATOR ASHFORD: Yeah. Yeah. Right. [LR520]

LONNIE FOLCHERT: I would like to see that expand to North Platte. [LR520]

SENATOR ASHFORD: More. Okay. [LR520]

LONNIE FOLCHERT: Then I could move resources and help out Keith County and maybe even down south to McCook, if we actually get a reporting center in North Platte.

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And I believe we're third on the list and we may not get it this year, but I think there's something in the future that would be of benefit to District 11 Probation. With that being said, drug court has made an impact in Dawson County and Lincoln County. So I'm pleased with the way that's going and Judge Doyle's commitment to that. I'll...that's testifying as a probation officer, a chief probation officer. I've been with probation for 23 years now; as a law enforcement officer in Keith County for three years before that. Now I'll testify as a citizen of Keith County and I'll agree with Randy Fair, the county attorney for Keith County, that we need additional help out at Lake McConaughy on holiday weekends. I was camped out there this week...over the fourth, and it was just crazy. The marijuana was very open, some of the law enforcement guys testified about that and Randy stated that it was just out in the open. And I called twice about it. And they were just too busy with other stuff to even deal with the infraction of marijuana at Lake McConaughy. A 180,000 to 190,000 people; we have Keith County Sheriff's Office trying to deal with that, our local Game and Parks. When I first moved to Ogallala, I was part of the law enforcement community and the State Patrol would come out and we'd have 30 or 40 State Patrol officers out here on the beach. We had a mobile booking unit that was out of a camper that was at the lake at Martin Bay, and they would just book everybody at the lake and never bring them into town. This last summer, I saw those things reoccurring that I saw 20 years ago as a law enforcement officer out here with my family camped at Lake McConaughy. So that's my testimony as a concerned citizen about what's going on at the lake and marijuana from Colorado. And all the folks that I called on all had green plates. So I can't say for sure where they got the marijuana, but I don't think it takes a rocket scientist to figure that out. [LR520]

SENATOR ASHFORD: Probably not Ogallala as much. [LR520]

LONNIE FOLCHERT: No. No. [LR520]

SENATOR ASHFORD: No. I don't know. That's very...I think North Platte is on the list for the... [LR520]

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LONNIE FOLCHERT: They are I think like third, Senator. [LR520]

SENATOR ASHFORD: I mean we talked a lot about it on the legislative floor. Hopefully they do it. Of course, we'll see. Thank you for all your work. [LR520]

LONNIE FOLCHERT: Thank you. [LR520]

SENATOR ASHFORD: Yeah. Okay. Who else would like to testify here? Oh, I'm sorry, Sheriff. We're here and then we'll go here. [LR520]

ADAM HAYWARD: Good afternoon. My name is Adam Hayward, A-d-a-m H-a-y-w-a-r-d. I am the sheriff of Deuel County. Thanks for coming out today. In regards to your bill, I read through that. A concern of mine is...I think it was number three, where you have increase of State Patrolmen in the Panhandle. I don't think that's an answer for this problem due to, basically, NSP's focus right now is on seat belts and alcohol violations. They've kind of got away from the drug enforcement portion of it as far as on the roadways. But say if you did implement these extra troopers and that they would have to be highly trained in interdiction or, you know, seeking out drugs on the roadway, this would be a detriment to my county. Right now, my county has about 1,800 people in it. Our tax levy is at the max it can be. We had our budget hearings last week already. With the current cases we have right now, I mean, we're at the point we don't have enough money to, you know, to do...to take on any more cases or any more problems that this causes us. So, you know, you put ten more troopers out here and we have five times more cases, our county can't...we can't do that. I know you guys talk about you want to collect data; and we don't...Deuel County doesn't have two or three years to sit back and look at the numbers and collect data because we'll be broke, we won't be able to handle these cases. We have had an increase, since the legalization of medical marijuana, every year. We go back to 2011 when I took over as sheriff. Felony marijuana cases stemming out of Colorado, we had about eight. In 2012, we had about

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15; 2013, we had 25. This year to date, we already have 30. I know a lot of bigger agencies are probably saying, what are you whining about, we'd love to only have 30 felony cases. But our county, you know, it's a huge burden for us. We don't have money. I would get a lot more benefit if I had two or three more deputies than I did if I had five or six more troopers in my area. That was a concern of mine is, you know, a lot of people say, hey, I need more law enforcement. That's true, but in effect...in a sense it would be a detriment to our county if we had ten more troopers working the road there. Number five, with your increase of fines or penalties--to me, I'm with Sheriff Jenson. I think if you take less than an ounce of marijuana, which is a \$300 fine now, and you make it a \$2,500 fine; you take over an ounce of marijuana up to a pound, which is, I think, the max fine on that misdemeanor is \$1,000, make it a \$5,000 fine. If you have a pound or more, make it a \$10,000 fine. Are these people going to pay those fines? Probably not, but if it detours them to take I-70 and go down to Kansas instead of Nebraska, that only helps us out. Our biggest problem is the expense. We don't have a jail. We contract with Sheriff Jenson. After today, thank you for only charging us \$45 a day instead of \$95 like Sheriff Hebbert has to pay. (Laughter) That helps us out very much. But since 2011 till to date, our jail budget has increased \$100,000. Probably 90 percent of our cases are drug cases. Last year, Deuel County spent \$50,000 on public defenders. So, I mean, it's a huge, huge expense for Deuel County. Part of our problem, too, is where we're limited on our numbers, where I have myself and three officers. If one of my...myself or one of my deputies pulls somebody over and it turns into, you know, a vehicle search because we found marijuana or whatever, we're calling somebody out who is off duty, so now we're paying overtime. So any way you look at it, we have expense from this, and a lot of expense. [LR520]

SENATOR ASHFORD: Thanks, Sheriff. Yes, Senator Davis. [LR520]

SENATOR DAVIS: Thank you, Senator Ashford. And thank you for coming, Sheriff. The information that you gave us is kind of overwhelming in a lot of ways. And, you know, one of the goals of the Legislature many years ago was to sort of tier everything in

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terms of the misdemeanor offenses, X plus or Y and...as far as the fine is concerned, and so that is sort of why these fines are where they are. But my question really comes down to if you ended up assessing that kind of a fine, don't you think you'd end of having those people come back to serve their time out? [LR520]

ADAM HAYWARD: You know, we probably would. But I think it would deter a lot more of them, them coming in. And I don't know if it's...we had talked to Senator Schilz about maybe imposing a restitution that it be paid back to that agency that had the man-hours in those cases to try to generate some money back to, you know, like, Deuel County to help out with the expense of these cases. [LR520]

SENATOR DAVIS: So are most of your arrests on 76 as it enters, or are they...? [LR520]

ADAM HAYWARD: Well, 76 and 80, both. [LR520]

SENATOR DAVIS: Either way. [LR520]

ADAM HAYWARD: Yeah. You know, we're kind of different. We have 4 miles of Interstate 76 and we have 40 miles of Interstate 80, so, and we get them off of both interstates. [LR520]

SENATOR DAVIS: So, obviously, if you've got 30...you said you've got 30 felony cases this year and how many of those are drug related? [LR520]

ADAM HAYWARD: Out of those 30 felony cases, those are all marijuana cases from Colorado. [LR520]

SENATOR DAVIS: All marijuana. [LR520]

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ADAM HAYWARD: Yes. [LR520]

SENATOR DAVIS: So that would be all over a pound then. [LR520]

ADAM HAYWARD: Yes. No, let me...let's go back a little bit. A lot of those...we're seeing an increase with the edible products, a huge increase. And with the edible products, like we talked about, if they had the THC oil, the hash oil in them, that's a felony to possess that. So, I mean, we see anything from less than an ounce to we've seen up to 110 pounds of Colorado marijuana, I mean. So we're getting all kinds of weights. But with the edible products we've seen since 2014, we've seen a huge increase with the edible products. [LR520]

SENATOR DAVIS: So let's talk about the 4th of July weekend. Did you have significant number of arrests that particular weekend? [LR520]

ADAM HAYWARD: No, we did not. We were...we were...been kind of down on manpower lately, so we, basically, had one guy working. And, basically, we handled calls...we didn't...we don't get out and work the interstate all the time. Between myself and my three deputies, we maybe spend eight hours a week out there, that's it. So, we're only scratching the surface of what's actually going through. [LR520]

SENATOR DAVIS: You talked a little bit about your public defender costs and I'm sure you're...(inaudible) a contracted county attorney with this gentleman. [LR520]

ADAM HAYWARD: Yes. [LR520]

SENATOR DAVIS: What has that done to the budget there for the court aspect of it? [LR520]

ADAM HAYWARD: It's made it go up a lot. [LR520]

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SENATOR DAVIS: Any idea how much? [LR520]

ADAM HAYWARD: I'm not sure. You probably would have to ask him if he knows. I don't know how much the court is budgeting extra for this increase. [LR520]

SENATOR DAVIS: And then the other question, of course, when you prosecute something, you have to go to court...and, first of all, you spend quite a bit of time in the whole arrest process. [LR520]

ADAM HAYWARD: Yes. [LR520]

SENATOR DAVIS: Any idea about the number of hours you do? [LR520]

ADAM HAYWARD: From the time...from the time you stop somebody till you do the roadside investigation, the vehicle search, tow the vehicle, transports to jail, do interviews, process evidence, we're getting anywhere between 30 to 40 hours per case. [LR520]

SENATOR DAVIS: Then you go to court. [LR520]

ADAM HAYWARD: Yes, yes, that's just...that's from the time we pull them over till we get all of our reports and all of our evidence into the county attorney for prosecution. [LR520]

SENATOR DAVIS: Okay, thank you. I think that's it. [LR520]

SENATOR ASHFORD: Thanks, Sheriff. I'm sorry, yes, Ken...Senator Schilz. [LR520]

SENATOR SCHILZ: Yeah, thank you, Sheriff. Good afternoon and thanks for coming in.

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You had mentioned that you're only doing a few hours of work on the interstate every week. Is that correct? [LR520]

ADAM HAYWARD: Yes. [LR520]

SENATOR SCHILZ: Yeah, and so when we talk about the LR520 counties compared to the rest of the state or whatever, in my opinion, if you're finding that much in those eight hours that you're there, every county in Nebraska, especially the ones that are on I-80, are border counties now because that's just a conduit that's moving them all the way through the county. I mean it's not... [LR520]

ADAM HAYWARD: Yes. Yeah. [LR520]

SENATOR SCHILZ: You're not catching them all, obviously. [LR520]

ADAM HAYWARD: No. No, no, we're probably catching less than 1 percent. So anybody along Interstate 80, their numbers...if they do any traffic enforcement on the interstate, their numbers have to reflect the increases of marijuana. [LR520]

SENATOR SCHILZ: Yeah. Thank you. [LR520]

SENATOR ASHFORD: Thanks, Sheriff, very much. [LR520]

SARAH CARSTENSEN: Good afternoon. My name is Sarah Carstensen. I'm a deputy county attorney in Hall County. I am no Mark Young, but I will do my best to fill his role in this hearing. [LR520]

SENATOR ASHFORD: I could comment, but...but I guess why? You know, I mean. [LR520]

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SARAH CARSTENSEN: I do want to echo a few of the comments that others have made. When it comes to forfeitures and prosecution, that was one of the things that Mr. Fair talked about, the case citation is Juan Franco, Jr., it's 257 Neb. 15, and it was a 1999 case, where the prosecution did proceed forward on a forfeiture. And because of that, when they went back and tried to prosecute on the criminal aspect, they were not allowed to because of double jeopardy. Other states do this where they do both; Nebraska does not. So that would have to be a change put forth through statutes because of the interpretation by case law. Another case that I want to bring to your attention is State v. Utter, it's a 2002 case. It is 263 Neb. 632. And that was when earlier they were talking about the language of the statute itself containing "mixture" or not containing "mixture" within the statute. Marijuana does not contain mixture. So for example, the edibles that we're talking about, if we wanted to prove up a specific amount, that would probably have to be sent to our state lab in order to get a specific amount, in order to...if you wanted to prosecute it that way. Depending on the volume and the other facts, we may be able to prosecute it as a distribution case, but it would depend on the facts of every case. In terms of how this might impact the state lab, I can tell you already with cocaine and methamphetamine and other drugs, khat, whatever you choose, they're running four months behind right now as it is. So if you were to then throw in volumes of marijuana at them, I don't know what that would do to their time or our time in getting those results back. Another one of the comments I wanted to follow up on was the DUI drug cases. Right now there is no, per se, level of THC in a person's blood that decides that you are, per se, under the influence of a drug such that you cannot drive a motor vehicle. We've already had one case in Hall County where the facts were such that the driving was a distracted driver more so than swerving or something like that, but the judge's interpretation was that if you aren't swerving, even if the officers are telling us that based on our field sobriety tests and a confirmatory test that you have marijuana in your system, that's not enough. So it would be helpful to have some sort of, per se, level in order to help us protect ourselves from drugged drivers. There were some comments about probation. I can tell you from my experience in cases that when we get...I can see that there are occasions where we get something

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called an "administrative sanction" back, where we have an individual who is on probation for whatever reason, they send us a document that says they violated their probation by testing positive or failing to test. Most of the time when I get those administrative sanctions back to my office, they also recommend, do not pursue a violation. And it may take two or three of those before we get to a point where they're recommending whether or not to pursue a violation. And that's a give-and-take choice between whether this is cost-effective or whether it's effective for the community to continue on with probation as a means of rehabilitation or if we need to take the next step. [LR520]

SENATOR ASHFORD: And they have graduated sanction authority, correct? [LR520]

SARAH CARSTENSEN: They do. And I've started to see even our county court judges put in clauses in their probation orders that say if you...for the first offense of failing to test or testing positive, we expect you to immediately report to jail for 48 hours; for a second violation, report to jail immediately for 72 hours. And that's before we would ever even get to a probation violation. I've prosecuted in Hall County for about ten years now. During June to July of 2014, I prosecuted also in Hamilton County. I can tell you that I routinely see drug cases from the interstate. I can't tell you where all of the drugs are coming from. That information is not necessarily relayed to the prosecutors from law enforcement, but could probably be easily obtained by them. In many of those cases, the offender is not necessarily from the state of Nebraska, especially when the drugs get in higher volumes, but sometimes they are. In my experience...and I don't have the statistics for you because I didn't know that was...didn't know this was coming up in this way. But in my experience, the time frame that I see, reaching back on my experience, is that when medical marijuana became available in Colorado we saw a bump at that point in time. And it has increased now since the legalization of smaller amounts without needing that extra hurdle of having to get a medical marijuana card. Also in my experience, the variety of treats, the variety of edibles that have come across have greatly increased. And again, that's hard to prosecute unless you're prosecuting it

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simply on an infraction level. I can tell you the process in Hall County with regard to small amounts of marijuana, if it is an infraction, they will issue a ticket. That person is then given a date and time to appear. That is not scheduled for a trial immediately. They appear at that date and time or pay in advance. If the person wants a trial, they appear on the given date and time and request a trial at that time, and it is then set on the docket for a trial. One last comment regarding testing for controlled substances in fatalities: It's true, the only substance we're currently testing for, statutorily, as far as I'm aware, is alcohol. And I think we may be missing what else is killing Nebraska citizens or those traveling through our state because we're not testing for the rest of the substances that could be in someone's system. And without that extra step we won't know. And our answers...our results may be incorrectly reflecting that alcohol is more responsible when it could be a combination of those two things. That's all I have, if anyone has any questions. [LR520]

SENATOR ASHFORD: Well, that was very helpful. I don't see any questions. Senator Davis. [LR520]

SENATOR DAVIS: You heard earlier talk about Colorado law which, I think, was a blood test for marijuana. [LR520]

SARAH CARSTENSEN: I don't know if it's a blood test or not. In Nebraska for the presence of THC we use a urinalysis. [LR520]

SENATOR DAVIS: Urinalysis. But through that urinalysis, you're not able to establish whether someone is under the influence of marijuana or not? [LR520]

SARAH CARSTENSEN: In Nebraska? Here, when I prosecute DUI drugs cases, what happens is the DRE takes a urinalysis sample, urine sample, sends that off to our state lab. Our state lab then does a pretest and a confirmatory test for whatever substance the DRE suspects may have been ingested by the suspect. When we get those results

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back, they are reflected in terms of presence or absence, confirmatory or negative. But it does not say that if you're confirmed at more than 50 nanograms, you are under the influence. It simply is a measure at this point of presence or absence, confirming the presence of, say, marijuana in someone's system to go along with the DRE officer's and the stopping officer's observations. [LR520]

SENATOR DAVIS: And then on the edibles issue, just trying to get some clarification, because some have testified that you really can't do anything with those except issue a citation, others say you can arrest. What is the...can arrest and seize, I guess. What's your interpretation of that? [LR520]

SARAH CARSTENSEN: To me, it depends on what the rest of the facts are. Let's say you have somebody that has five edibles and that's it; they're the sole person in the car and there's no other indication that that person was doing anything other than getting a snack for themselves, a treat for themselves. I don't think I would pursue that as a distribution case, even though that candy may weigh a pound, because there is no indication of...that they are intending that for distribution. And the weight alone, at this point, is meaningless without that mixture language telling us how much of that is actual marijuana. [LR520]

SENATOR DAVIS: So then with regard to the edibles, it's just sort of up to you to decide whether it's a problem or not. I mean, how do you prosecute edibles, I guess, is the question. [LR520]

SARAH CARSTENSEN: Depends on how it's referred to us. I would say most of the time it is being prosecuted as an infraction, unless it becomes more obvious that it was intended for distribution--there's a large volume of it and the person says, I was getting it for me and my friends. I intended to go back and give it to my girlfriend, give it to my buddies, those kinds of things. [LR520]

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SENATOR DAVIS: So it's sort of...it's then at the discretion of the prosecutor as to how to deal with that, correct? [LR520]

SARAH CARSTENSEN: Yes. [LR520]

SENATOR DAVIS: One other thing I'm just going to say, when we first started to do this study, we were going to try to do the whole I-80 corridor all across the state, but we just thought it was too all-encompassing to try to do that, so that's why we ended up with the LR520. But I certainly think Hall County is...gets, you know, some of the same problems that we have here. [LR520]

SARAH CARSTENSEN: Hall County and even Hamilton County, where I prosecuted as well, has seen that same issue. [LR520]

SENATOR DAVIS: Thank you. [LR520]

SENATOR ASHFORD: Thank you very much. I don't see any other questions. Thanks. Those are great comments though, very helpful. Anyone else wish to...yes, sir. [LR520]

JONATHON STELLAR: My name is Jonathon Stellar, J-o-n-a-t-h-o-n, last name, Stellar, S-t-e-l-l-a-r. I'm the deputy county attorney in Deuel and Cheyenne County. I'll try and keep this somewhat brief. But I guess I'll start off with what Sheriff Hayward was talking about in terms of increasing the penalty fine or the fines for possession of less than an ounce. Like for example, you mentioned like \$2,500 and threw those numbers out there. Well, for those people that don't show up, basically what would happen is the judge would issue a bench warrant. For infractions and misdemeanors, those generally are not extraditable, meaning a sheriff's office will not go and extradite them from another state. They might for surrounding states, but they won't go all the way to Massachusetts for somebody... [LR520]

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SENATOR CHRISTENSEN: Can you grab the mike? [LR520]

JONATHON STELLAR: This one? [LR520]

SENATOR CHRISTENSEN: No, the other one. [LR520]

SENATOR MCGILL: No, no, the one that's sitting there. [LR520]

JONATHON STELLAR: Can you hear me now? [LR520]

SENATOR CHRISTENSEN: Yeah. [LR520]

SENATOR MCGILL: Uh-huh. [LR520]

JONATHON STELLAR: Okay. So those are generally not extraditable, which means if they don't show up, they don't show up. At some point they'll probably want to try and take care of it. But again, it's not like that's a added burden on the sheriffs' offices that they would then have to go throughout the country and round up these people who are failing to appear on infraction offenses. I'll give you a brief summary in terms of what we see in Deuel County. Sheriff Hayward mentioned that our numbers are at...we have 30 felony marijuana cases directly attributable to Colorado. The beginning of this year, from January to April, we were on track to triple those numbers. Unfortunately, there was some turnover in the Deuel County Sheriff's Office, so they weren't working the interstate as often. And our...we have a trooper who is an expert at drug interdiction. And he went on medical leave from May until probably the end of this year. So we're on track to double our numbers, not triple them. But if everybody was at full staff and we were all operating, we would have probably tripled our numbers by the end of the year. In terms of...Sheriff Jenson mentioned that we do have documented cases of juvenile use in terms of distribution and possession of marijuana products. That is correct. We're starting to see that more, especially just given our proximity to Colorado, Sterling. And

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we are seeing more of those hash products as well with juveniles. And that's what's even most...that's what is most terrifying. For example, you're only supposed to eat half a cookie; you eat the whole cookie; you're supposed to eat half a brownie, and you guys have heard some of the stories out of Colorado in terms of the effects of that. You asked Sheriff Hayward a couple of questions about costs. He mentioned that our...the Deuel County Sheriff's Office, their jail budget has tripled in size. Our cost of prosecution has also increased. Last year, 2013, we spent \$50,000 paying a public defender. We do not have the figures for 2014, but given that our felony marijuana cases have doubled or are on track to double, it's not a far conclusion to assume that our...the cost of paying our public defenders are going to go up as well. That doesn't include the cost of any contested hearings, jury trials, suppression hearings, preliminary hearings. Obviously, those are added expenses and those are added expenses for the public defender and for the sheriff's office or the troopers who have to testify. I don't get paid overtime, although maybe I should. So, basically, I just...we handle them. In terms of DUIDs, I would share in everyone else's concerns. In Deuel and Cheyenne County, in Deuel County our DUIDs have almost quadrupled; in Cheyenne County we've doubled them at least. The issue for us is the majority of our felony marijuana cases, the majority of the time the driver is impaired. We just don't have the manpower, nor do we have the DREs or any of the budget to basically do a felony drug investigation as well as a DUI investigation. Those are two, somewhat separate things and that would increase our time; it would increase the cost of it. So, basically, what we have is...I would almost argue that our DUIDs are up an infinite amount. And I just can't quantify it because we don't have the manpower to determine what that is. I mean if you're looking at 30 felony marijuana cases, and if the majority of those drivers are impaired to some extent, that's an issue. The other issue, obviously, is marijuana does stay in your system for a long time. I think it's 30 days. So at some point if we're going to establish some sort of, per se, limit, you have to take that into account. When talking about DUIDs, I'm sure you guys have heard some of the reports out of Colorado where they...the federal government has now authorized grant funding for the Colorado State Patrol to actually seek out and investigate DUIDs. Well, there's a reason behind that. Their DUIDs are

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obviously up, and given our proximity to Colorado, ours are as well. And as Mr. Schaub said, it's just a matter of time before we do have one of these cases and the public is going to ask us what have we done to prevent it, and we're here today. [LR520]

SENATOR ASHFORD: It is unfortunate, of course, that they're getting the federal money... [LR520]

JONATHON STELLAR: Right. [LR520]

SENATOR ASHFORD: ...and they get the tax...theoretically, they get the tax...well, not theoretically. They get the tax dollars from the sale of the stuff; you don't, and you have to... [LR520]

JONATHON STELLAR: And, I mean, if the state were to authorize grant funding, I know law enforcement officers would use it. DUIDs, investigating DUIDs are different than doing criminal drug interdiction. It doesn't require the same amount of training. I mean, you approach it as a DUI. You receive that training at the academy. But that would be one way to address...some DUIDs would be, I guess, to increase some sort of...open up some sort of funding to alleviate the impact on local law enforcement officer's budgets. I guess to no surprise, I would disagree with the interpretation that everyone else has given regarding hash. In Cheyenne and Deuel County, we do things...well, I'll explain it and I'll try not to complicate it too much. But hash and edible products, edible products in Cheyenne and Deuel County, we prosecute edible products as hash. (Section) 28-401(27) defines hash as concentrated marijuana, which is, essentially...it is separated from plant form. That's what an edible is. It's a brownie that's been separated from plant form, plant form being like a bud, which is what most people are...when you think of marijuana, that's what you think of, something that you pack into a little pipe or a bong and you smoke it. An edible is hash. There's also hash oil. Hash oil is also separated from plant form. Hash oil is something you put into like a cigarette and you smoke it or you put it into food. You bake with it and it increases the potency. Because

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hash is concentrated marijuana, it's a higher THC level. With respect to...so, for example, let's say you have a marijuana brownie. We would prosecute you for possession of hash, which is a Class IV felony. Under 77-4301, that's Nebraska's drug tax stamp statute. That defines a dealer as someone who possesses seven or more grams of a controlled substance. Controlled substance is hash. So if you have two or three pot brownies and they exceed seven grams in weight, then we're going to prosecute you for possession of hash with intent. That's a Class III felony. A couple of people have discussed the weight and in terms of separating the THC from the mixture, and I don't have the statute with me right now. I can't do the research on my phone, but we're authorized by Nebraska statute, the law enforcement officer is, that we take the weight at the time the officer weighs it. Doesn't say anything about mixture. It doesn't say anything about separating it. So, for example, if you've got, like I said, three pot brownies and they exceed seven grams in weight, then we're going to charge you with possession of hash with intent. So, essentially, if you bring edible products that exceed seven grams, if you bring those into Cheyenne or Deuel County, you leave a felon. I don't want to use the word "profile," but what types of individuals are we seeing traveling through Cheyenne and Deuel County? Generally speaking, college kids, kids with no criminal history, career criminals. You have...by career criminals, I mean those who have an extensive criminal history dealing with possession of drugs or mainly the distribution of controlled substances. And we also do see some Nebraska residents. There is no profiling of Colorado residents or anything like that. If we do have any cases with Colorado residents, it's with the edibles. They aren't aware that that's how we approach edibles; we charge them as hash. So they...when they come into our counties, we charge them with possession of hash. You don't see Colorado residents, necessarily, distributing within Nebraska. If anything, it's Nebraska residents going to Colorado, purchasing it, and then traveling back to wherever they live to then sell it. I'm not sure if you're aware, but I think the going rate now is...a pound of marijuana in Colorado costs about \$2,500. Well, you can double your money if you take it out of state. So that's a pretty decent return for those who have an entrepreneurial spirit, as Sheriff Overman mentioned. We also see a lot of...there is no regulation or...well, there

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is regulation. It just seems it's not enforced within Colorado, where you have a number of individuals traveling from dispensary to dispensary purchasing the minimum amount that they can...or the maximum amount, which is an eighth of an ounce. And the next thing you know, you'll have one or two pounds and that's what they then bring across the border and that's what we find. [LR520]

SENATOR ASHFORD: Jonathon, let's stop you for a second, see if we have any questions so far here. Does anybody have any? [LR520]

SENATOR SEILER: I do. [LR520]

SENATOR ASHFORD: Yes, Senator Seiler. [LR520]

SENATOR SEILER: As deputy county attorney, I'd like to get a little help here. We've heard some suggestions of raise the fines. The fines in Nebraska go to the school districts, so it doesn't help the county prosecutor, it doesn't help the sheriff's office, that type of thing. But have you seen any states in your research that attribute the costs of the county attorney, the sheriffs, the court back on these people, would be easier to forfeit anything they have, or transfer that to their home state? And if they've got a house, put a lien on their house. [LR520]

JONATHON STELLAR: I haven't seen any of that. I know...when speaking to other...well, when speaking to the sheriffs and the chief and my boss, Paul Schaub, we've discussed the idea of some sort of a restitution issue where, for example, let's say you charge some...or someone is convicted of possession, more than an ounce, less than a pound, or even over a pound, and then as part of their sentence they're required to pay restitution, for example, reimburse the sheriffs' offices for whatever manpower. I'm not sure how you would do that legislatively. I'm, obviously, just a criminal... [LR520]

SENATOR SEILER: I'd like you to think about it, and if you come up with a good idea let

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me know. [LR520]

JONATHON STELLAR: Okay, I'll do that. But I think...I mean, if it...obviously it's an issue because we're spending the manpower and the money to fight it. [LR520]

SENATOR SEILER: That's right. [LR520]

SENATOR MCGILL: Uh-huh. [LR520]

JONATHON STELLAR: So if it would be...if it's possible for us to recoup some of that, that would be great. [LR520]

SENATOR SEILER: And the worst part about it is you don't have the money. [LR520]

JONATHON STELLAR: Right. [LR520]

SENATOR SEILER: Or the resources to be able to get it. [LR520]

JONATHON STELLAR: A few people have mentioned the federal forfeiture versus state forfeiture and that would be one way to address it. Obviously, that money wouldn't necessarily go to pay salary, but, for example, the federal threshold is around \$5,000. So anything that exceeds \$5,000 and you do...and you can establish that drug nexus, the feds would adopt it, more or less. But anything less than that, it would be on the county. But if we could do sort of a dual... [LR520]

SENATOR SEILER: Well, isn't that the game being played now mostly in the east where the big cases... [LR520]

JONATHON STELLAR: I think...yeah...I believe Mr. Fair...yeah, in Keith County. [LR520]

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SENATOR SEILER: ...the feds jumps in. They do the confiscation of the assets. But aren't they splitting that back with the local sheriff? [LR520]

JONATHON STELLAR: They are. And I believe the percentage is 80 percent. Sheriff Hayward is really up to date on that. But I believe we get 80 percent back; whereas, if we seized it locally, it's a little bit more. But it's...I mean it's not...maybe it's 100 percent. I'm not entirely sure. But if we could prosecute them and seize their assets as well, that's one way for us to sort of recoup some of those costs, because then we've got this federal...or this drug forfeiture fund that we can then access for equipment, training, that type of thing. But the feds do...and they do...and they have informed us that if we can show that it's over \$5,000, then if we can provide them that nexus, they will take it. [LR520]

SENATOR SEILER: Thank you very much. [LR520]

SENATOR ASHFORD: Jonathon, why do we...anybody other...any other questions? Okay, why don't you...if we could wrap it up. [LR520]

JONATHON STELLAR: The other issue would just be canines. Obviously, that goes along with the asset seizure. You see a lot of money. The canines can find the money and they find drugs, so if you can find the money and establish that nexus, then that helps. So thanks. [LR520]

SENATOR ASHFORD: This is very helpful. Thanks, Jon. Do we have anyone else in the room? The gentleman in the back, sir. [LR520]

BILL HAWKINS: There's not a lot to distribute to everybody. [LR520]

SENATOR MCGILL: If you could pick up that other microphone. Thank you. [LR520]

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BILL HAWKINS: (Exhibits 4, 5, 6, and 7) You bet. Senators, law enforcement, and county attorneys, I appreciate your time and effort looking at this important issue. My name is Bill Hawkins and I have a typed out testimony that I prepared earlier, but with the amount of information that has flooded in on you, it has kind of changed my presentation a little bit. I've spent a lot of years researching and educating people and talking with them around the state and speaking around the country on this issue. And so I offer quite a different realistic perspective than what, maybe, you've heard. We're talking about people in this country and specifically in this state. I guess I'd like to first start out by identifying the criminals that we are talking about. You have young college kids. I talked to Wendy Elston, who is county attorney in Seward County, about who she is running across. They are not...she's not worried or...as a couple other county attorneys have discussed...small amounts of cannabis. That's everywhere. They are looking at...Wendy is experiencing one to eight pounds, up to a thousand pounds in Seward County that they are confiscating. Those are drug dealers transporting it to somewhere else to profit from it. Some of these are young kids that are entrepreneurial business people that have the gumption to actually do that. With this war on drugs, we are ruining all these kids' lives--Wisconsin, Indiana, Iowa. They are transporting it because they have friends who are using it back there and they're providing it. In visiting with Colorado, these one to eight pounds, up to a thousand pounds are not coming from the legal, taxed and regulated dispensaries in Colorado. These people are striving to make this work. They are licensed...or they are driver's license checking, IDs, and you have a limited amount of cannabis that you can purchase. There is nobody going around the state of Colorado and buying an eighth of an ounce from every dispensary to come up with five pounds to transport back to Wisconsin to make a profit in Wisconsin. Cannabis is available everywhere in this country. You have a price of anywhere from \$300 to \$600 a pound in any place in this country. So with a 25 percent tax in Colorado, you cannot make a profit. So these one to eight pounds, up to a thousand pounds are coming from the black market that Colorado is striving to eliminate; the feds have given them a reason to eliminate this. So it's not coming from this legal, taxed and regulated

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market, because they are striving to make that not happen. People have been importing and transporting cannabis through this state for decades. It has not stopped. Right now we have a border with Mexico that has fences, that has every resource we can throw at it and we cannot stop it. That is the issue that we are looking at here right now today. The other part of the issue is illegal drug dealers, the black market, that this tax and regulate takes it away from it. We are worried about keeping our communities and our kids safe. And I applaud these officers who are out there day in and day out fighting a drug epidemic that we have. Cannabis isn't part of that issue. It is a safe, alternative, recreational plant that has been used for centuries as a medicinal, recreational herb by every civilization in the world. It has proven medicinal values that were brought up by one of the county attorneys. That is our other group of people transporting cannabis across this state. Personally, I met a person from Nebraska in Colorado a couple weeks ago who is suffering from Parkinson's disease. It is affecting his life. He was trying cannabis in Colorado, but he would not bring it back because it is illegal, because he was afraid of being stopped on the border. But this benefits him. We have multiple sclerosis patients. I just met a gentleman, Brandon, who is a war veteran who is in...just got out of prison for a cannabis-related offense. He's working in a fast-food restaurant. This man is an intelligent man who served our country and is suffering from posttraumatic stress syndrome. He knows that cannabis helps him. So he is looking at moving to Michigan because of our cannabis laws here and the fear that he is going to be persecuted and prosecuted for this herb that helps him. [LR520]

SENATOR ASHFORD: Bill, thanks. Do we have any questions of Bill at this point? We kind of were going on a five-minute rule. [LR520]

BILL HAWKINS: You know, I hate to... [LR520]

SENATOR ASHFORD: I get your...we get your point, but. [LR520]

BILL HAWKINS: I understand that, Senator Ashford. But I don't think there was a

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five-minute limit on any of our other speakers. And I know most of the other speakers went way over five minutes. And I'm representing thousands of Nebraska citizens.

[LR520]

SENATOR ASHFORD: But let me just explain to you that these other testifiers had questions asked and that's why they went over five minutes, but we...I have this little thing in front of me that says no time left. But why don't you conclude. [LR520]

BILL HAWKINS: You know, Senator Ashford, you know, I wasn't given a... [LR520]

SENATOR ASHFORD: Okay. [LR520]

BILL HAWKINS: ...five-minute limit to start with and I think that is kind of a bias... [LR520]

SENATOR ASHFORD: Well, there is no bias, but what I'm going to ask you to do is sum up for us. [LR520]

BILL HAWKINS: Okay. [LR520]

SENATOR ASHFORD: And then if there are any questions...Bill, just sum up and if there are any questions. [LR520]

BILL HAWKINS: I will certainly sum up. [LR520]

SENATOR ASHFORD: You have 30 seconds to sum up and then we'll go on. [LR520]

BILL HAWKINS: You know, I appreciate that. We Nebraskans are the center of this crossroads, you know, the transition of a prohibited, demonized substance to a taxed and regulated product that provides economic development, takes away the profits from

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the criminal black market and puts it in the hands of licensed, inspected, regulated, local businesses. Colorado is developing a market the federal government is allowing and profiting from. It is providing an economic boom for the state, creating thousands of jobs. They are striving to follow the rules and check IDs. The only way we can keep our youth and communities safe is to put cannabis in a taxed and regulated stores, take the money out of the drug dealers' hands, and keep our children from being exposed to the real dangers out there. I also have a list of pop up drugs that I gave you that are really becoming an issue. We have a heroine epidemic in this nation that has been created by "opiated" pharmaceutical companies that we need to address. So there are a lot of issues that have come up. And I thank you very much for your time. [LR520]

SENATOR ASHFORD: Thanks, Bill. [LR520]

SENATOR MCGILL: Thank you. [LR520]

SENATOR ASHFORD: Any questions of Mr. Hawkins? Seeing none, thank you. Thanks. [LR520]

BILL HAWKINS: Thank you, Senators, for your interest and time. And I will provide you with more information on this subject. [LR520]

SENATOR ASHFORD: And you have provided us with some and we appreciate it. Thank you. [LR520]

SENATOR MCGILL: Thank you. [LR520]

SENATOR ASHFORD: That will conclude the hearing, other than I would ask my colleagues if they have any comments regarding what's been said, Al or Mark or anybody from... [LR520]

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SENATOR DAVIS: I just want to thank you all for coming and giving us the information which is very useful to us and, you know, we needed to know what was going on. Now we do. [LR520]

SENATOR ASHFORD: Thank you all very much. [LR520]

SENATOR MCGILL: Thank you. [LR520]