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Judiciary Committee
March 01, 2017

[LB478 LB500 LB558]

The Committee on Judiciary met at 9:15 a.m. on Wednesday, March 1, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB500, LB478, and LB558. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good morning. Usually I say good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete representing Legislative District 32. I Chair this committee. I'd like to start off by having my colleagues introduce themselves starting with Senator Baker.

SENATOR BAKER: Roy Baker, District 30, southern Lancaster County and Gage County.

SENATOR KRIST: Bob Krist, District 10, Omaha.

SENATOR CHAMBERS: Ernie Chambers, Omaha.

SENATOR HANSEN: Matt Hansen, District 26, Lincoln.

SENATOR PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and southern and western Hall County.

SENATOR EBKE: And assisting the committee today are Laurie Vollertsen, our committee clerk; Brent Smoyer, one of our two legal counsels; and the committee pages--you gave me this list--are Elsa and Emma. Welcome. They don't usually...they aren't usually our pages. Okay, on the table over there by the door you'll find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us keep an accurate record. There's also a white seat on the table if you do not wish to testify but would like to record your position. We will begin testimony with the introducer's opening statement. Following the opening, we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first name and your last name and then spell them for the record. If you're going to testify I

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ask that we keep the on-deck chair filled. If you have any handouts please bring up at least 12 copies and give them to the page. If you don't have enough copies the page can help you make more. We will be using, because we have an unusual day today, we will be limiting each bill to one hour. We'll have proponent testimony, including the introducer, will be limited to 30 minutes, opponent testimony will be limited to 30 minutes, and neutral testimony will be given no more than 10 minutes total. Individual testimony will be put on a strict three-minute clock excluding the introducer and any questions you might hear from the committee. If someone has said what you intended to say, please assert your position briefly and move on. When the yellow light goes on you have one minute to wrap up your testimony. And you do not need to take the whole time. Your public...your record on...you may record your position which can be made part of the public record on those white sign-in sheets. This is an unusual day. Usually we have...we go until we're done and it doesn't really matter on a...when we're in the afternoons, but because we have other places we have to be--we go back into session after lunch today--we are going to have to make sure we limit the time. As a matter of committee policy let me remind everybody to please put your cell phones on silent or vibrate mode. We ask that you not talk on your cell phones while you're in the committee hearing room. You can step out if you need to do that. If you have committee...if you see committee members coming and going it may be because they have other...their own bills that are being held where there are hearings being held in other committees, so don't take it personally. So that being said, let's proceed with the first bill of the day, LB500, authorize the carrying of concealed handguns by qualified active and retired law enforcement officers. And we have a stand in. How many are planning on testifying on this particular bill? We've got two. In any capacity, just two? Okay. Thank you. [LB500]

TONY BAKER: Thank you, Madam Chairman, and good morning, members of the Judiciary Committee. I'm Tony Baker and that's spelled T-o-n-y B-a-k-e-r. I'm Senator Tom Brewer's legislative aide. And for the record, that is T-o-m B-r-e-w-e-r. Senator Brewer represents the 43rd Legislative District in western Nebraska. He's presently introducing a bill in front of the Natural Resources Committee. I'm here to introduce LB500 which changes the law regarding the requirements governing the concealed carry of handguns in Nebraska by active and retired law enforcement officers. I want to be very clear about what this bill is. This is not a bill about gun rights or the Second Amendment. This is about creating a law that grants a limited privilege to carry a concealed weapon for law enforcement officers. It's not about the right to bear arms. Right now the law requires law enforcement officers to go through the same requirements ordinary citizens do in order to get a permit to carry a concealed handgun privately off duty. I'm not trying to say we should lower the bar for concealed carry permits for law enforcement officers. To the contrary, this bill gives credit where credit is due and seeks to substitute one credentialing process for another. Section 1 on the second page of the bill spells this out. If a law enforcement professional has passed the requirements their agency has established in order for them to carry a concealed handgun in the performance of their duties as a law enforcement professional, then by virtue of that qualification and the identification credential that comes with

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it, they should be authorized to carry a concealed weapon off duty or retired for as long as they maintain that professional credential. That's all LB500 is saying. If you can pass an annual handgun qualification test for active duty law enforcement officers then you shouldn't have to duplicate the effort and go through the training and application processes the Nebraska concealed handgun permit requires. Subjecting otherwise qualified law enforcement officers to this requirement is actually applying a lower standard to them. Nebraska concealed handgun permits require one test and are good for five years. In order to qualify for the provisions in this law, active or retired law enforcement officers that wish to conceal carry a handgun privately off duty must undergo annual enforcement certification to carry a handgun. Those who retire and choose to let this annual recertification lapse automatically fall under the law ordinary citizens follow to get a Nebraska concealed handgun permit. Retired officers who wish to conceal carry under this law must meet the annual state standards for law enforcement firearms qualification at their personal expense. Law enforcement officers retain their identity, training, experience, and dedication to the safety and welfare of the community regardless of whether they are on duty in their agency's jurisdiction or off duty or retired. For as long as a law enforcement professional maintains their annual certification to carry a handgun as a law enforcement officer, that training and credentialing should count and it should be a substitute for the ordinary concealed carry permit process. You will hear from those following me that this is an altogether good and proper thing to do. In closing, I would like to add a personal note. It's not often that a senator's staff gets to introduce a bill to a committee. Though I am prepared for questions--I wouldn't dream of coming before this committee and not be--I realize it's not customary for those...for staff to be asked questions by a committee. It's nonetheless a distinct honor for me to do this on Senator Brewer's behalf. I urge you to vote this bill out of committee. I will be followed by some gentleman who will be happy to take your questions. This concludes my testimony. Thank you. [LB500]

SENATOR EBKE: Thank you, Mr. Baker. Senator Krist. [LB500]

SENATOR KRIST: So I'm not going to violate the time-tested custom of asking you a question but I am going to put something on the record for our legal counsel. Does this apply to active duty Guard or Reservists who also have a permit while they're on active duty or Guard or Reserve? [LB500]

BRENT SMOYER: As written, no. [LB500]

SENATOR KRIST: No. [LB500]

BRENT SMOYER: No. [LB500]

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SENATOR KRIST: So we're excluding those that are law enforcement officers at Offutt and our Guardsman and our Reservists. [LB500]

BRENT SMOYER: Qualified law enforcement based on the... [LB500]

SENATOR PANSING BROOKS: Can you speak up a little. [LB500]

BRENT SMOYER: Sorry, I apologize. Wasn't sure if I'm allowed to go on. Based on the reading, based on the way it's written, if they are law enforcement officers. Now if they are MPs, then they would be allowed under this. If you would like to see it expanded, it would probably take an amendment to qualify all Guard. [LB500]

SENATOR KRIST: So I'm suggesting to counsel and to Senator Brewer, Mr. Baker, that you do consider expanding that to law enforcement that are certified for and are annually qualified law enforcement officers. [LB500]

TONY BAKER: Vis-a-vis the military credentialing process. [LB500]

SENATOR KRIST: Exactly. And that would be active duty Guard and Reserve. [LB500]

SENATOR EBKE: Any other questions or comments at this point? Okay, thank you, Mr. Baker. Next...first proponent. [LB500]

RAY ESSMAN: (Exhibit 4) Good morning, Chairwoman Ebke and esteemed Senators. I am Ray Essman from Taylor, Nebraska. I am a recently retired federal law enforcement officer, special agent. I was a law enforcement officer for 32 years employed by the Department of Defense, the Department of State, and the Inspector General. I'm here in support of LB500 and I'd like to urge the Judiciary Committee to support and move to General File LB500 for eventual passage and signature by the Governor. I've never been here and done this before but I have interviewed Senator Chambers in 1976 when I was in college for a paper I did. This bill primarily follows the federal Law Enforcement Officer Safety Act, also known as LEOSA, as it describes the requirements law enforcement officers have to meet to carry a firearm nationwide. That's also referenced in 18 USC 926. LEOSA delineates the years of law enforcement experience required, medical issues, identification media required, and annual firearms training to qualify under the provisions of LEOSA. Every law enforcement officer whether active or retired in Nebraska is positively impacted by this legislation. Prior to this legislation, I do not believe Nebraska had any specific statutes allowing concealed firearms carry by off-duty LEOs not in their jurisdiction where they're employed. Current Nebraska statutes are very ambiguous in regards to carrying a

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firearm not in your jurisdiction. Law enforcement officers by training and experience are required to take action in many instances, especially violent crimes. Part of that officer's necessary equipment for public safety and the officer's safety includes a firearm, a magazine, and handcuffs. Most off-duty officers generally carry these items while not on duty. At present, for example, if an officer decides to visit a city not in their jurisdiction to, say, shop, they must make a decision whether to react to their training if a violent felony occurs in their presence, or if they have to remain unarmed. As the law stands now, the officer has to be concerned as to whether he can legally be armed. For example, the officer could be shopping in a mall that is posted, but if he enters through a store, he may not be aware that it's posted. If he encounters a violent felony, he has to be concerned whether he's posted in a no firearm area. So does he take action as trained or go unarmed for fear of committing an inadvertent crime? And the crime is the officer carrying a firearm off duty. Further, if the officer uses a firearm to stop a violent crime off duty, there will be a civil suit filed. The law enforcement officer then has the problem of the offender's lawyer potentially stating that the LEO, law enforcement officer, shot my client while committing a crime. It kind of puts you in a really bad position. And the crime is the wholly unnecessary crime of being armed in a posted area. It's red. Do I have to stop? [LB500]

SENATOR EBKE: Yeah. We've got your written testimony here. Any questions? Senator Chambers. [LB500]

SENATOR CHAMBERS: How long have you been retired? [LB500]

RAY ESSMAN: I've been retired about four years, sir. [LB500]

SENATOR CHAMBERS: And how many instances occurred during that time where you needed to have a gun but didn't have one? [LB500]

RAY ESSMAN: None where I currently live. I live clear out in the Sandhills and we have 700 people in the county and I don't lock my doors. So I haven't needed one but if I still lived in Lincoln or St. Louis where I just recently retired from, it's kind of... [LB500]

SENATOR CHAMBERS: Are you aware of two recent incidents, one where an ex-cop is now on trial for having killed a man in a theater? He was carrying a gun. He pulled his gun and killed a man in a theater. He's on trial right now. I don't know what the outcome will be, but are you aware of that incident? [LB500]

RAY ESSMAN: I saw the headline but I didn't read the story, sir. [LB500]

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SENATOR CHAMBERS: It's on national news too. Are you aware of the incident where this cop was upset with some kids going across his property and he had a confrontation with a 13-year-old and pulled his gun and fired it? [LB500]

RAY ESSMAN: Yes, sir, I did read about that story. [LB500]

SENATOR CHAMBERS: And are you aware that he was suspended with pay and is under investigation now? [LB500]

RAY ESSMAN: Yes, sir, I believe I...that's what the story reported. [LB500]

SENATOR CHAMBERS: And he probably...I don't know what the rules are in that state, but since he was a cop, he probably...well, I'm not going to say probably. You would expect with all this training that we're hearing that these officers have, they while actively being in law enforcement wouldn't pull a gun and shoot when children are involved like that, do you think, or is that the standard that police officers are held to where...while you were a federal officer? [LB500]

RAY ESSMAN: Well, I'm not sure with your run-on statements there exactly what point you're making. But no, I was not trained to shoot unarmed children. I will say I've pulled my firearm on, quote unquote, children before that had firearms pointed at me. [LB500]

SENATOR CHAMBERS: You said you had pulled your gun on fire...on children? [LB500]

RAY ESSMAN: Well, if a child is 17 and under, I've had guns pointed at me several times. I spent most... [LB500]

SENATOR CHAMBERS: I'm not talking about pointing guns--unarmed children. [LB500]

RAY ESSMAN: No. [LB500]

SENATOR CHAMBERS: You didn't pull your gun on them? [LB500]

RAY ESSMAN: No. [LB500]

SENATOR CHAMBERS: Would you be surprised if a federally trained law enforcement officer pulled a gun on unarmed children? [LB500]

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RAY ESSMAN: As a general rule, I would say, yeah, that would surprise me. But I'm sure I could come up with a scenario of some type. But as a general rule, I would agree with you, sir. [LB500]

SENATOR CHAMBERS: Are they carrying these guns because they might be...they think they might be called on to function as a law enforcement officer even though they're retired, or are they carrying it for self-protection, if you know or have an opinion? [LB500]

RAY ESSMAN: In my opinion, sir, I can only speak for myself and others that I've talked to that are retired, and a lot of them carry a firearm because there's a lot of guys coming out of jail that still would be probably interested in me. And I really don't want to run across really bad guys unarmed because they don't care whether they violate a law by carrying a firearm concealed illegally as a felon. I really don't want to be in that position where I have to not be able to defend my wife or my grandkids or myself against a violent felon. [LB500]

SENATOR CHAMBERS: And you think because you're a former federal agent you might be more prone to be in this situation like that than the ordinary citizen? How would people know...I didn't know you were a former federal agent. How would people know, even if they're criminals, how do they know that you're a former agent? [LB500]

RAY ESSMAN: Well, you wouldn't know, sir, but people that I put in jail would know because I've interviewed them and I testified in their hearings and they got subsequently sent to prison. [LB500]

SENATOR CHAMBERS: Well, since you have put some in jail, did any of them confront you after they got out? [LB500]

RAY ESSMAN: I've had one instance of it. [LB500]

SENATOR CHAMBERS: And he had a gun? [LB500]

RAY ESSMAN: He did not have a gun at that time and I was not retired. [LB500]

SENATOR CHAMBERS: Okay. That's all that I have. Thank you. [LB500]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB500]

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RAY ESSMAN: Thank you, Senators. [LB500]

SENATOR EBKE: Next proponent. [LB500]

RICK EBERHARDT: (Exhibit 5) Good morning. Chairman Ebke and members of the Judiciary Committee, my name is Rick Eberhardt and I am currently in my 32nd year serving the people of Pierce County as their sheriff. I am here today to speak in support of LB500. This bill would allow active and retired law enforcement, who are in good standing, the ability to carry a concealed weapon without having to complete the CCW class. I believe that if a retired Nebraska officer meets or exceeds the state's minimum firearm qualification and has been qualified by a certified Nebraska firearms instructor it is important for him or her to have the ability, if they choose to, to carry a concealed weapon. As many of you know, most retired officers would like to quietly walk away from their career that they put blood, sweat, and tears into. If they choose not to carry, I am okay with that. However, many officers across this state, after years of dealing with individuals who have made bad decisions and have committed serious, violent crimes have been threatened with serious bodily harm to ourselves as well as to our families. I would like to tell you about one such incident. On November 15, 1992 in Pierce County, a county resident took it upon himself to take the life of an innocent family member and shot another family member who survived their injuries. This subject was charged and convicted of second-degree murder, first-degree assault, and use of a firearm to commit a felony. He was later sentenced to life in prison. During this subject's incarceration, prior to sentencing while being transported, he told this officer that he thought he would be out of prison in 14 years. He stated that he would come back home to Pierce County and that one day I would be walking down the street and he was going to walk up to me and shake my hand and that I should be afraid of what he had in his other hand. He also said that when he was out he would like to get together and go pheasant hunting but I would have to be real careful not to get too far in front of him because he had a real hair trigger. He later told the sentencing judge it was a joke, but I wasn't laughing. By allowing me to carry a concealed weapon it will give me the ability to protect myself and others that should be near...should the need arise. On February 28, 2008, the person I was talking about that was convicted of murder was paroled by the Nebraska Parole Board on a 4-1 vote. He currently lives in northeast Nebraska and is not allowed in Pierce County. Thank you for giving me this opportunity to testify. [LB500]

SENATOR EBKE: Thank you, Sheriff Eberhardt. Senator Chambers. [LB500]

SENATOR CHAMBERS: Well, Sheriff, any law enforcement officer who is currently an officer or a retired officer can get a permit to carry a concealed weapon. So if you were retired, you are not prohibited under the current law from obtaining a concealed weapon. You just don't want, even though you now...not right now but when you're retired, although you're an ordinary citizen,

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you don't want to be an ordinary citizen. You don't want to have to do what an ordinary citizen does under the law. You want to circumvent or end run that to get a gun. But you could get a gun even without this law if you were retired, couldn't you? [LB500]

RICK EBERHARDT: I have a gun. I can conceal...under the federal law I can carry a weapon. But if I let it lapse, you know, I guess I think I should be able to carry a gun. I've had the training. I've met the minimum state requirements. I've certified. And like I said, I'm talking for myself but I'm talking for a lot of other officers across the state. We've by far had more training and experience than you're going to get in a CCW class. So our training and experience is way above and beyond what you're going to get in that class. [LB500]

SENATOR CHAMBERS: I say this because I've said it before and I don't wear the kind of clothes where I conceal weapons. I don't carry a gun--never have. And I bet when it comes to personal threats I've got more threats than anybody in this state. But what could I do? If I've got a gun and somebody wants to do something to me, they're going to do it anyway. If they know that I don't have a gun they're not likely to hurt somebody else when they want to hurt me because I'm not in a position to do harm to them. And believe it or not, that's the way I view it, because if I've got a gun I don't know when it's going to come, whatever it is. I've gone to little towns in Nebraska and there were threats out there. I'd even been notified by the State Patrol. And I went and I gave talks at schools. One was Broken Bow. That's one I can remember for sure. But I got there, there were State Patrol cars, sheriffs cars, and city police cars. And when I went in the school I said what happened in this school? They said you. I said what do you mean? They said, well, many threats were given and that's why we're here. I said, well, I got the threats, too, but I came. I don't have a gun. I didn't call you to come for me. And I think when you bring all of this show of force, you frighten people and there might have been people who didn't even let their children come to school that day. So apparently I'm less afraid than law enforcement people. But forget that I'm unusual and I'm different because I had people who wanted to join me when I went...I don't remember if it was Norfolk but there was a mixed race couple who had been attacked by white people. The Ku Klux Klan had had a march in front of their house. And I went out there and let people know...and this was at night. And I went and talked to a group of citizens--no guns, no bodyguards, nothing. And when I hear law enforcement officers expressing this much fear, I'm worried. A frightened man is a dangerous man. So I'm giving you my opinion because you're law enforcement and you're entitled to respond however you please. [LB500]

RICK EBERHARDT: I can just tell you I've had a person put a bomb on my car and blow my windshield out of my car. My wife and family was afraid to open the mail box for about six months. I was in the social services offices in Pierce, Nebraska, in my courthouse last year when they were taking a child away from a meth head. I was assaulted, had to have three stitches in my mouth. And as that guy lay on the floor handcuffed, he looked up at me and he said when I get out, he said I'm going to kill your whole family. I'm going to kill your wife. I'm going to kill your

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son. I'm going to rape your daughter before I kill her. And then he said I'm going to shoot you last so you have to watch the whole thing. And he was sentenced to 8 to 16 years, 8 to 16 years. And when he gets out if he shows up at my house, he better be afraid. Or if he shows up at me he better be concerned that I'm going to be able to take care of myself and protect myself, my family, and anybody else that's around me because that's what I do. [LB500]

SENATOR CHAMBERS: I'm not talking about that. You could get a gun as a private citizen. What you want to avoid is having to do what it ordinary citizen has to do, because you can get a gun. Every former cop can get a gun. And I cannot stop the proliferation of guns. But I don't believe cops should be given a special status over ordinary citizens and not be required to comply with the law that's there for everybody. And I'm having this exchange with you because I'm not going to have it with everybody who comes up here. And since you're a law enforcement person if you felt threatened by me you might be packing now, although you're not supposed to have it here, you could handle yourself. But some people come here and apparently they think that I'm going to jump over the table and attack them because they fear my loaded mouth more than do a loaded gun. But that's all that I would have. Thank you. [LB500]

SENATOR EBKE: Sheriff, would you spell your name for the record. [LB500]

RICK EBERHARDT: Eberhardt, E-b-e-r-h-a-r-d-t. [LB500]

SENATOR EBKE: Thank you. Any other questions? Senator Halloran. [LB500]

SENATOR HALLORAN: Just a comment, thank you, Sheriff, for your testimony. [LB500]

RICK EBERHARDT: Excuse me? [LB500]

SENATOR HALLORAN: For the record, thank you for your testimony. [LB500]

RICK EBERHARDT: You're welcome. [LB500]

SENATOR EBKE: Are there any other proponents? Do we have any opponents? Anyone testifying in the neutral capacity? Mr. Baker, do you want to waive or are you going to... [LB500]

TONY BAKER: I'll waive closing. [LB500]

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SENATOR EBKE: Okay. Do we have any letters? We have a few letters to read into the record. (Exhibits 1-3) We have the ACLU of Nebraska in a neutral capacity; Rod Moeller of the Nebraska Firearms Owners Association in support; and Christy Abraham from the National League of Cities, support. Okay. This closes the hearing on LB500. We'll begin with LB478. Senator Groene, welcome to the Judiciary Committee. [LB500]

SENATOR GROENE: First time. [LB500]

SENATOR EBKE: Don't count on that meaning that we'll be easy on you. (Laughter) [LB500]

SENATOR GROENE: (Exhibits 3 and 4) Looking forward to it. LB478 was brought to me by a constituent named Jeremy Wood and he's behind me and he will testify, him and wife. I'm just going to read a sentence from the letter he contacted us...me. First, he said I've been hearing some feedback from the Game and Parks Division on felons hunting, particularly with a bow and arrow. I own a small archery store in central Nebraska. So this not only affects me as a business owner, I am a felon myself. What I have heard is that according to a new policy implemented in February of this year that any felon who registers their successful harvest of a big game animal under an archery permit will then be approached and arrested for felon in possession of lethal weapon--all rumor. I've checked with Game and Parks and they've been giving bow hunting to felons for...since we've had bow hunting. He goes on to say later I never considered myself to be a criminal. I did bad things for a very short period of life. I accepted responsibility for what I did, paid my fines, and served my sentence. Since then I've been very active in supporting my community with my shop, donating to many different local organization and community support events. I've even been asked by the Game and Parks to help them with educational events. I know that laws and how they are they are interpreted are not aimed at a single individual in most cases, but it would be extremely hard to not take something like this personal. So what we came up with was to...I'll just read the statement of intent. A person convicted of a felony are not allowed to possess firearms, knives, or brass and iron knuckles under Nebraska Revised Statute 28-1206. In Nebraska Supreme Court Case, State v. Gozzola in 2007, the Nebraska Supreme Court ruled that unless the weapon was specifically mentioned in the law, possession was not prohibited. As archery equipment is not specifically mentioned in 28-1206, many persons who have completed their sentences engaged in archery as a recreational hobby or used archery equipment to hunt and supplement their food supply, because of course they can't have guns. However, the Nebraska Game and Parks Commission was recently advised that while a bow might not be listed in statute, the arrow might fall under the very broad definition of knife under 28-1201(5) which reads that "Knife means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds." I believe we passed out a picture of a modern arrow, hunting arrow. LB478 clarifies existing law by specifically allowing felons the possession of archery equipment, including arrows. Further, if the person is in the possession of a valid recreational hunting

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license, the bill further allows possession of a knife for the purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs. The bill defines archery equipment and arrows for clarification of what is allowable. It defines a recreational license, clarifies harassment protection orders, and provides some cleanup in the statute. The knife part was added due to the Nguyen case in May of 2016. They have to have a hunting license to have that knife, that hunting knife, in possession of it. The clarifications of the harassment, if you read it, the bill writing took a look at it and said this is a badly written law, struck some bad language, moved some definitions around to where they belong, but it in no way changes any of definitions of harassment of what a misdemeanor is for sexual assault or domestic violence. They did that; we didn't ask for that. We took their advice to clean up the language. If you look at the fiscal note, we're going to actually, I don't know by what authority but I agree with them, we could stop some recidivism. We talk about recidivism in felons. What better way to keep a chip on...not to put a chip on a felon's shoulder by letting them reenter society and take part in many of the activities that we all do if we're a felon or not once we have paid our dues, our due to society. So they talk about recidivism. Later on in the fiscal note, Game and Parks: The proposed legislation could provide for an increase in permit sales, but it is not enough to be significant enough to register a fiscal impact. It has amazed me as I ran for election how many ex-felons as I knocked on doors hang their heads and said we can't vote. They live with it all their lives and I tell them yes, you can vote if you paid your dues after you've been clean for two years. This is another example of where we can tell these people so you were young once. You made mistakes. Let's go on with our lives. You can go hunting and enjoy some outdoor activities. So that's why I introduced it, because of Mr. Wood. And the more we looked into it, the language needed to be clarified. It's something that's going on right now, bow hunting license. But it's in the definition of whichever game warden or judge or district attorney decides what a knife is, or other instrument. Thank you. [LB478]

SENATOR EBKE: Thank you, Senator Groene. Any questions for the senator? Senator Chambers. [LB478]

SENATOR CHAMBERS: Suppose...here you're looking at the purpose. You don't know a person's purpose until whatever it is is actually used. Why could not an ex-felon have a gun and say it's only for the purpose of target shooting? Even if he was a bank robber, he's changed his ways and his purpose now is to have the gun just for target shooting. And since purpose is the way you judge it, you can't read minds. And this might sound facetious, but we're talking about implements that can be deadly that in some instances have been deadly. So I'm not asking these questions necessarily for you to give an answer but to put on the record some of these other aspects and if somebody else speaks maybe they will address them. [LB478]

SENATOR GROENE: I guess I go by common sense. And law I think should be based on, is there a danger? I can't think of the last time somebody held up a quick stop with a bow and arrow

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or somebody was assaulted with a bow and arrow, felon or nonfelon. You become a felon by using a gun. I can't think of a chance where person who was clean and then decided to use an arrow to commit a crime. [LB478]

SENATOR CHAMBERS: And you mentioned the knife. What about the knife? [LB478]

SENATOR GROENE: The knife, yes. The knife is still in law. We are defining an arrow, bow and arrow as an exception to the definition of a knife. But if you go hunting, which I'm sure you do, Senator Chambers, lions do, anyway, once you bag your game you have to clean it. And you can't do that with a three-inch knife. [LB478]

SENATOR CHAMBERS: You may find this hard to believe, Senator Groene, but I saw a mouse in my house. And I thought about that. I said now there is a virus that mice are known to carry, but they usually are mice that you'd find in forests and wooded areas but not in a city. So I thought about that and I thought about it. And I don't have any children or anybody living with me, so nobody is going to be bitten by the mouse. The mouse didn't attack me. But because I may on occasion mention it...and people set traps for mice, so I want it to seem like I'm in the mainstream so I got a trap and I set it. But I didn't put any bait in it and I didn't catch the mouse. So I know people hunt and some believe that you kill what you eat or eat what you kill and there are others who do it for trophy and various reasons. But there's no reason I would ever hunt, but I'm not going to take my attitude toward hunting and put it on everybody and say banish hunting. But I'll have to think about this item because others could make a similar argument for other implements. And I don't want this to have been before us, I not have raised the issue, then would raise it at some other point. And that's why you wouldn't even have to answer or respond to it if you'd rather not beyond what you've already said. [LB478]

SENATOR GROENE: Thank you. I would consider right now it's probably considered common law because they're doing it. [LB478]

SENATOR CHAMBERS: What do you think about setting a trap for a mouse without putting anything in it? Does that give a mouse a sporting chance? [LB478]

SENATOR GROENE: I catch them alive, too, but I let them out and hopefully the tomcats and the skunks will be fed. My wife thinks I ought to kill them. [LB478]

SENATOR EBKE: Senator Krist. [LB478]

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SENATOR KRIST: I have a serious question. In my past I had some exposure to special operations and the bows that were used by special operators, including something very small, was very lethal, very deadly. I don't see a definition in here that applies to sport bows being a certain construction as opposed to those that I saw used and was trained to use in that line of work. Would you be amenable to legal counsel working on a definition of what that precisely would be and maybe your witness can come up and talk or your testifier can come up and talk about that in terms of definition? [LB478]

SENATOR GROENE: I would assure Jeremy is very...he owns a bow store, bow hunting store. He could probably answer some of those questions for you. [LB478]

SENATOR KRIST: Perfect. Thank you. [LB478]

SENATOR EBKE: Senator Pansing Brooks. [LB478]

SENATOR PANSING BROOKS: Thank you, Senator Groene. I'm interested...so you say all these changes on domestic violence are something that the Bill Drafters wanted to do? [LB478]

SENATOR GROENE: To clean up the language. The language is still there. If you look at what's crossed off and look... [LB478]

SENATOR PANSING BROOKS: But they've crossed off different sections, that's what I'm... [LB478]

SENATOR GROENE: They did; but if you look above, they added it, cleaned up the language, and put it in the right place. [LB478]

SENATOR PANSING BROOKS: Like on page 4, line 16 they've crossed off. I mean I've got to go through and look at what they've crossed...I'm not saying anything about what you're doing. I just...we've got two issues here. [LB478]

SENATOR GROENE: I've got two attorneys in my office and they both over-looked and said it's really actually...you know, I'm not a lawyer but some of that old language was kind of redundant and didn't need to be... [LB478]

SENATOR PANSING BROOKS: I don't know, I'm sort of surprised... [LB478]

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SENATOR GROENE: I mean like in page 2 why does "any person who possesses a firearm", and above it starts out by saying the same thing. [LB478]

SENATOR PANSING BROOKS: I hope we have somebody from some of the domestic violence groups that is going to speak to that because it's, to me, we're mixing two things and having a hearing on specifically one. So anyway I'm just going to have...I just wanted to make sure that we aren't doing anything. I know you're saying... [LB478]

SENATOR GROENE: Well, we're having a hearing on both because it's in my opening statement and it's in the statute so therefore it's included in the hearing here. [LB478]

SENATOR PANSING BROOKS: Okay. I know, but I bet most of the domestic violence people haven't...okay, maybe we have letters from them. Do we? [LB478]

SENATOR EBKE: I don't think. [LB478]

SENATOR PANSING BROOKS: No letters. So I think for the domestic violence groups not to weigh in on this or say we have no problem, I just want to make sure. [LB478]

SENATOR GROENE: I worried about it. I said it might sink my bill. But then the way I read it it's really a cleanup. It's moving one section to where it should be instead of in another area. It just clears things up. [LB478]

SENATOR PANSING BROOKS: Okay. Well, I just wanted to raise that and say that I wanted to check with that. The other thing is could you add this end to a handle and make it a knife, this picture that you've passed out? [LB478]

SENATOR GROENE: It would probably be legal because it's not 3.5 inches long. [LB478]

SENATOR PANSING BROOKS: But you could do that, right? [LB478]

SENATOR GROENE: Yeah, but it's less than 3.5 inches so you could use it. You could own it. [LB478]

SENATOR PANSING BROOKS: The blade, this part has to be 3.5...? [LB478]

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SENATOR GROENE: Yeah, that's what the Supreme Court said in the Nguyen case and the statutes... [LB478]

SENATOR PANSING BROOKS: Okay. Well, you could make it 10 inches and then it wouldn't be legal, is that what you're saying? [LB478]

SENATOR GROENE: Unless you had a hunting permit. [LB478]

SENATOR PANSING BROOKS: You could create something however you want. [LB478]

SENATOR GROENE: Well, the handle isn't part of the knife. [LB478]

SENATOR PANSING BROOKS: No, but if you created this part, instead of being 3.5 and it was 10 inches, right? [LB478]

SENATOR GROENE: Then you couldn't own it. [LB478]

SENATOR PANSING BROOKS: Or you could make it a foot and a half. But then you couldn't own it. [LB478]

SENATOR GROENE: No. [LB478]

SENATOR PANSING BROOKS: So I'm just asking you. [LB478]

SENATOR GROENE: It would be a very awkward arrow that...fly. [LB478]

SENATOR PANSING BROOKS: Well, I'm not talking about an arrow. I'm saying changing it into a knife... [LB478]

SENATOR GROENE: I understand. [LB478]

SENATOR PANSING BROOKS: ...this kind of thing. So that's what I'm asking you. So it's legal if it's three inches and attached to a handle as if it were a knife, but it's not legal if it went to five inches and was attached to a handle, is that correct? I'm trying to understand it. [LB478]

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SENATOR GROENE: Yeah, that's what this court case said. The blade can't be over 3.5 inches long. [LB478]

SENATOR PANSING BROOKS: Okay. Thank you. [LB478]

SENATOR GROENE: The one this summer, the Nguyen case. That's what I think Senator Schumacher's bill following me addresses that court case. [LB478]

SENATOR PANSING BROOKS: Okay. Thank you. [LB478]

SENATOR EBKE: Senator Chambers, did you have another question? [LB478]

SENATOR CHAMBERS: She covered part of it. [LB478]

SENATOR EBKE: Okay. Any other questions? Okay. [LB478]

SENATOR PANSING BROOKS: Oh, wait. Senator Hansen. [LB478]

SENATOR EBKE: Okay. Did you? I'm sorry. [LB478]

SENATOR HANSEN: I was going to say this is more a comment for the record but I've noticed your fiscal note implies that we might receive savings because we are lessening criminal penalties. We had a fiscal note where we might see expenses by increasing criminal penalties. Both of these are the first time I've ever seen those so that's an interesting choice of fiscal (inaudible). [LB478]

SENATOR GROENE: I like the fiscal note and I have no influence over them. [LB478]

SENATOR HANSEN: Perfect. [LB478]

SENATOR GROENE: And I got it 24 hours ago. [LB478]

SENATOR HANSEN: Perfect. Thank you, Senator. [LB478]

SENATOR KRIST: When did you get it? [LB478]

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SENATOR GROENE: I came to work at 4:30 this morning. I think I got it then. I seen it on my desk. So anyway. Honest. [LB478]

SENATOR EBKE: Shazam. [LB478]

SENATOR GROENE: I didn't know perjury is part of testifying here so I better be clear. [LB478]

SENATOR MORFELD: You have immunity. [LB478]

SENATOR EBKE: Okay. How many people do we have testifying for this bill so we can time the arrival of our next...? So we've got three, four. Okay. First proponent. [LB478]

JEREMY WOOD: My name is Jeremy Wood. I am the original contactor to Mr. Groene. [LB478]

SENATOR EBKE: Spell your name, please. [LB478]

JEREMY WOOD: J-e-r-e-m-y W-o-o-d. I appreciate your time. This is my first time so I apologize for not having copies for you, but my testimony is pretty brief. I'm the owner and operator of a small archery store in North Platte. I was convicted of felony burglary in May of 2010. I have always been involved in hunting and outdoor sports. My calling to archery is my way back to quality hobbies after my incarceration. It provides me with an outlet for my thoughts and energy as well as giving me quality learning experience for my children. We spend many hours together bow fishing, hunting, planting food plots, and maintaining our hunting equipment. This allows me the opportunity to teach them many different skills that they wouldn't otherwise have access to as well as bonding time. Since opening my archery store, I found that many felons use archery as a way to stay close to hobbies they grew up enjoying or simply as a new hobby that keeps them away from criminal activities. Most archers find groups of like-minded people to attend leagues, competitions, ranges, or hunting activities with. This camaraderie often provides felons with the good influences that they need to stay away from criminal activities and pushes them to be involved in their community and pass their passion for the sport on to the next generation. As someone who's been convicted of a crime, you become fearful of being arrested, returning to jail, and letting down those close to you. This fear keeps people from trying new sporting events or continuing them after their arrest. This bill would allow those same people the confidence to own archery equipment and hunting equipment without fear of being arrested or incarcerated for owning or traveling with their gear. It would also serve as an assurance that when you get out of incarceration, the state has your best interests

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at heart and is trying to give you access to good, quality outdoor activities that will help you resist reoffending and damaging your community. Hunting, bow fishing, and shooting archery equipment at ranges and state parks is also great income revenue for the state. Hunting and fishing permits, tags, park entry permits, range fees, and many other expenditures can help a felon repay some small part of the debt that they created upon being jailed. It helps support many small businesses that offer archery goods and equipment. It gives a prior convict interaction with the community through those businesses, asking for permission to access private land, donating meat to those in need in the community, and creating new friends and relationships through the camaraderie of the sporting events. In closing it is my firm belief that by providing prior criminals with access to good, quality events and hobbies that you severely decrease their likelihood to reoffend. [LB478]

SENATOR EBKE: Thank you, Mr. Wood. Questions? Senator Krist. [LB478]

SENATOR KRIST: Thank you. So the definition...have you seen the statute? [LB478]

JEREMY WOOD: I have, Senator. [LB478]

SENATOR KRIST: Okay. So on page 4 starting on line 9, Archery equipment means, and then it's defined: A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and target or hunting arrows, including arrows with broad, fixed, or removable heads. Do you think that limits the kind of tactical equipment I'm talking about in terms of employment as a...in the specials operations and those kinds of things? [LB478]

JEREMY WOOD: Having never been on special forces, I am familiar with the armed services and several operators, I won't go into that particular aspect. To me, what this covers is the usage of the general equipment. There are always people who are extremely skilled, extremely talented who are going to apply things for a method that they were not necessarily intended for. I think you would struggle to reword the document to cover every single usage that could possibly be done with the bow and arrow. But I would also say if anybody chose to use this equipment inappropriately there are still laws in place that would be able to punish them for that. This is mostly just supporting those of us who choose to use it recreationally so that we don't become offended...or offending to the public. So I wouldn't necessarily be afraid of, you know, any specific type of equipment because all of it still is restricted to a single shot. So you are still...you know, any bow and arrow is still significantly slower than a knife or a gun or a vehicle or I mean any of the regular things that we use on a daily basis. [LB478]

SENATOR KRIST: Okay. Thank you. [LB478]

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SENATOR EBKE: Any other questions? Guess not. Oh, Senator Chambers. [LB478]

SENATOR CHAMBERS: For the record, your offense did not involve you being like Robin Hood with a bow and arrow robbing the rich and giving to the poor, did it by chance? [LB478]

JEREMY WOOD: You know, Senator, my offense involved me being an idiot. [LB478]

SENATOR CHAMBERS: If it had been that, I would forgive and reward you. Just lightening the mood a little bit. [LB478]

JEREMY WOOD: And I appreciate your humor. The biggest thing that I would quickly cover here is I was a good person when I was growing up. I helped people. I tried to make a difference. And at some point in my life I failed. At this point, I'm back to who I was before and possibly better because of my incarceration. So I make it a point to try and better not only myself but my community and my peers and that's why I'm here in proposition of this bill is I think these type of opportunities are what helps people stay on the right side of the road instead of the wrong side of the road. [LB478]

SENATOR CHAMBERS: And just for the record, in view of questions I ask other people who testified here on other issues and even this one, I don't think anybody, unless it's just something heinous like maybe, you know, somebody cuts the head off a child or something, where you say a snapshot certainly but the act itself was so bad. We're not even talking about that. I think if we can have examples of people who did something and they've paid their debt and they're trying to re...put their train back on the track it should be on and they succeed, those people are arguments that I can use to try to show that we make, as legislators, we create crimes by saying this conduct is forbidden. We set the penalty. If you commit this crime, this is what you pay. I don't know of any other debt in society which after you've given what the contract says you have to pay that you have to continue paying. So I'm wishing you well in whatever you do, just so you don't think I'm against people having second chances. I don't even stop at second chances. [LB478]

JEREMY WOOD: I very much appreciate your comment, Senator, and I agree with you. I think that felonies are one of the few things in our society that a person never gets redeemed of. Once you are cast type into that, it is very difficult if not impossible to get rid of and it's the only debt on the record that I'm aware of that you have a penalty for that never stops. [LB478]

SENATOR CHAMBERS: Thank you. That's all that I have. [LB478]

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SENATOR EBKE: Thank you, Senator Chambers. Any other questions, comments? Thank you, Mr. Wood, for being here. [LB478]

JEREMY WOOD: Thank you. [LB478]

SENATOR EBKE: Next proponent. [LB478]

LORA WOOD: Good morning. My name is Lora Wood; it's L-o-r-a W-o-o-d, and I'm here in support of LB478. In 2004 I was convicted of a felony possession with intent to deliver methamphetamine. I was 19 at the time and unaware how my conviction would affect the rest of my life. After my release, I moved back to my hometown in North Platte and I fell back into my old habits. I had a 13-month-old daughter at the time and yet I was still out drinking and partying every night while she was left with my parents. Over the next few years I kind of got my act together and in 2007 I married Jeremy Wood and he introduced me to the world of hunting and fishing and I took right to it. Being a felon, especially in a small town, you always are a bit on edge. Everybody knows you. You end up with a reputation and it's a struggle to prove that you're a good person now. Just because mistakes I made in the past doesn't define who I am. If LB478 passes, it will help secure our rights and help define what a felon is allowed to own and possess and that's a huge comfort knowing that I can't just get pulled over and return to jail over something that the law defines as unclear right now. One of the biggest problems felons face is getting back to being a productive citizen. It's harder to find jobs. It's hard to get help with housing. Being a drug felon specifically you are not qualified for food stamps. And it limits your volunteer opportunities to be able to give back to your community. Archery is a positive activity that creates strong friendships and it certainly made my family closer, and I've met so many new friends through this archery store and through our annual deer camp. I've always been fascinated by nature and wildlife. Spending time outside with no phone calls, e-mails, interruptions has really helped ground me. A few hours in the woods is enough to change my entire attitude for the day. On top of that, it's given me a chance to teach my daughters about nature, biology, health, and what it means to do...to work for something. My oldest is planning on becoming a wildlife biologist for the last five years and this has given her a phenomenal head start on her career. I understand that my conviction will follow me for the rest of my life and (inaudible) positive activities and support for my family and friends is incredibly important in keeping people from reoffending. Archery can provide both these things. It has brought my family closer together and has given us something that we can all enjoy. Thank you for your time today. [LB478]

SENATOR EBKE: Thank you, Ms. Wood. Questions? Guess not. Thank you for being here. Next proponent. [LB478]

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SPIKE EICKHOLT: (Exhibit 5) Good morning, Madam Chair, members of the Judiciary Committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are in support of the bill for a reason that Senator Groene sort of touched upon in his introduction of the bill. We're concerned because this bill addresses the problem that we see with the overly broad definition of "knife" in 28-1201(5). I'm having distributed a copy of 28-1201 which has the definitions that apply in this statute that's in this bill, 28-1206. Essentially, "knife" is broadly defined as any knife with a blade over 3.5 inches or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds. As Senator Groene explained in his introduction, Game and Parks likely sees that definition--or someone does--as applying to arrows and arrowheads because those are items that are less than 3.5 inches. They are not knives, but they are things that are capable of causing tearing or cutting or stabbing wounds. The definition of knife is important for not just the crime of felon in possession of a weapon but also the crime of carrying a concealed weapon. The knife definition is very broad and it would apply not only to sporting things like bows and arrows and that sort of thing but all sorts of knives--utility knives that many felons who work in factories or do construction or work in different businesses use and have and possess on a regular basis. There is no requirement under the current definition that a person, as Senator Chambers indicated before, has to have bad intent to possess those. Simply having them and being a felon, a person is committing a crime. Now so far, or at least recently, the prosecutors have not really charged very many felon in possession for people who had these items for what I would call legitimate or innocuous purposes. We don't have people who are bow hunting, for instance, who are being charged with having these things. But that is just something that could happen. We are seeing though with carrying concealed weapon charges--and I'll talk to this when Senator Schumacher testifies on his bill--we are seeing that many other charges that were not charged before 2009 and certainly not until 2016 that are being added as secondary and additional charges for different criminal offenses. So our interest is really just narrowing the definition of "knife" and that's why we're in support of the bill, because it does address at least a component of that. [LB478]

SENATOR EBKE: Thank you, Mr. Eickholt. Senator Pansing Brooks. [LB478]

SENATOR PANSING BROOKS: Thank you, Chair Ebke. Thank you for coming, Mr. Eickholt. Have you looked at the fact that the bill totally repeals Section 28-1206 and looked at what 1206...I mean I've got it up. It says possession of a deadly weapon by prohibited person and penalty. There's a lot of stuff in there in 1206. [LB478]

SPIKE EICKHOLT: That's correct. I think that the repealer on page... [LB478]

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SENATOR PANSING BROOKS: I mean it's more than just the definition of a knife. So can you talk to getting rid of that whole part of the statute where it defines what a crime is and what a misdemeanor is. I mean it goes through a lot of information that isn't listed in any of this. [LB478]

SPIKE EICKHOLT: Sure. On page 4, lines 25 and 26 have what I call the repealer clause which repeal existing 28-1206... [LB478]

SENATOR PANSING BROOKS: Page 4, twenty what? [LB478]

SPIKE EICKHOLT: Page 4, lines 25 and 26... [LB478]

SENATOR PANSING BROOKS: Yes. [LB478]

SPIKE EICKHOLT: ...of the bill LB478, that repeals, as you indicate, 28-1206. I think because if the bill becomes law, then the new version of 28-1206 as in LB478 would become law. Now I did...to answer or to address a question you asked earlier about that restructuring or restating of misdemeanor crime and domestic violence, I looked at that. I don't know if that leaves anything out. I'm not testifying on that. That's not our interest. [LB478]

SENATOR PANSING BROOKS: That's what I'm worried about. I mean we don't have anybody here discussing the fact that it's totally changing a law on something other than a knife. Is that correct? [LB478]

SPIKE EICKHOLT: That's correct. I think that's just fair. And I assume what Senator Groene said is probably accurate, that maybe page 3 of the bill that describes a misdemeanor crime and domestic violence is just restating what's already in law. I'm not certain of that. As I said before, our interest is in narrowing the definition of "knife." Even though this bill does not address 28-1201(5), the definition, it does at least indirectly address that problem. [LB478]

SENATOR PANSING BROOKS: So we're going to change the laws on domestic violence and what constitutes possession of a deadly weapon under the guise of whether or not somebody can carry a knife. [LB478]

SPIKE EICKHOLT: Well, I'll just... [LB478]

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SENATOR PANSING BROOKS: I just don't understand why the Drafters have expanded this so significantly. I agree with Senator Groene, that that was...I just don't know. I'm happy to have people come talk to me and explain it all to me. I don't...28-1206 is a long statute and it speaks to a lot of...yeah, I mean it does talk about misdemeanor in here. But it sets forth specific standards in the statutes that aren't addressed in this new bill. So I guess I just need more information. Thank you for your testimony and I'll be happy to talk with Senator. I think he got sort of brought into this. I don't understand why they would change the...what he was trying to do and expand it so significantly. [LB478]

SENATOR EBKE: Senator Chambers. [LB478]

SENATOR CHAMBERS: Well, once the bill falls into our hands as a committee we can look at it and anything we have a concern about we can tighten it up or even rewrite some things or eliminate. So that's why I haven't said much about the other material, because we can deal with that, because as Senator Groene said, if I understand, all he's interested in really is the part about the archery equipment and the ability to exempt that from these other kinds of things. [LB478]

SENATOR PANSING BROOKS: Yeah, and this goes way beyond that, it seems to me. But maybe I'm confused with it. But anyway, that sounds good. [LB478]

SENATOR EBKE: Any other questions? Senator Krist. [LB478]

SENATOR KRIST: Just a point of interest, the repealer clauses that exist, and Senator Halloran and I dealt with this in Agriculture the other day, they repeal, repeal, repeal, repeal, repeal. You don't know what is in the clauses that are sometimes mentioned. You also don't know that it doesn't exist in law someplace else. [LB478]

SENATOR PANSING BROOKS: Right. [LB478]

SENATOR KRIST: So that's the homework that we need to do and I thank you for pointing it out. But I think that if it already exists someplace else in law and the Drafters are simply trying to clean up unneeded or redundant... [LB478]

SENATOR PANSING BROOKS: Yeah, we just need to have somebody testify to that. [LB478]

SENATOR KRIST: ...we need to have it. Okay. [LB478]

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SENATOR PANSING BROOKS: Thank you. [LB478]

SENATOR EBKE: Anything else? Thank you, Mr. Eickholt. Next proponent. Do we have another proponent on LB478? Any opponents? [LB478]

DIANE HUEBNER: (Exhibit 6) Good morning. My name is Diane Huebner, D-i-a-n-e H-u-e-b-n-e-r. I would like to voice my opposition to LB478 which, as described by Senator Mike Groene, would provide possession of archery equipment, including hunting knives, for recreational purposes by ex-felons. My question is, however, can a felon legally bow hunt in Nebraska? I've spent three years searching for a definitive answer to this simple question. If the answer was yes, this bill would be moot. The fact that LB478 is before you for consideration today gives me reason to believe that it is not currently legal for a felon to use or possess archery equipment in the state of Nebraska. In my search for answers, I contacted the Nebraska Attorney General's Office, Governor Ricketts' Office, the Nebraska Game and Parks, my local county attorney, the probation offices, the sheriff's deputy, Legislative Research analysis, and Senator Mike Groene with this question. The responses that I have received varied and have included statements such as: We can't interpret the law for people, especially the general public; well, it all depends on the county you live in and what your county attorney says; well, they've always been allowed to hunt with a bow and arrow. I've even been told, without a doubt, a felon cannot legally bow hunt with any type of bow in the state of Nebraska. I've also been told I guess it just depends. To date, my question remains unanswered. The ambiguity of the information available indicates that our laws need to be better defined. As it stands, the legal definition of a deadly weapon in the state of Nebraska per Statute 28-109 includes both a knife and any device used or intended to be used that is capable of producing death or serious bodily injury. A knife is further defined under Statute 28-1201 as a dagger, dirk, or stiletto with a blade over 3.5 inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, and tearing wounds. That being said, how would you define the purpose of a bow and arrow? A bow and arrow is marketed as a deadly weapon. The tips for the arrows are designed to kill. They are not only capable of but specifically intended to cut, stab, or tear their target. In my research I also looked to our neighboring states for both clarification and comparison. Colorado, for example, makes the law very clear. The Colorado Attorney General's Office articulates that a bow and arrow, compound crossbow, or other is considered a deadly weapon. Their law explicitly prohibits felons from possessing these items for any purpose. Those in support of this bill might argue that bows and arrows aren't used to harm or kill people anymore. This could not be further from the truth. You might try Googling murders by bow and arrow. I think you'd be shocked at the number of incidences in just the past few years that this has happened. I realize that there are many items that can be used to inflict harm, but none of those items are marketed to get the best kill like archery equipment is. I'm not certain what prompted Senator Groene's interest in the recreational hunting rights of felons. I guess I did kind of discover that right now. I do not understand his definition of what an ex-felon is or a felon is how does this affect felons who are currently on

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probation and parole. You know, are they able to go ahead and hunt while they're still serving a sentence? As a law-abiding citizen, it seems ludicrous to me to be spending the Legislature's valuable time looking to enhance a felon's ability to possess a deadly weapon for any purpose. [LB478]

SENATOR EBKE: We've got... [LB478]

DIANE HUEBNER: Any individual convicted of feloniously causing the injury or death of another has clearly demonstrated their poor judgment on the most significant scale. [LB478]

SENATOR EBKE: Ma'am. [LB478]

DIANE HUEBNER: Those individuals did not deserve to have laws amended in pursuit of recreation. I stand very much opposed to LB478, to amend laws which would allow felons to use deadly weapons for recreational purposes, and definitely not for those whom by their actions have seriously harmed or taken the life of another individual. [LB478]

SENATOR EBKE: Okay. Thank you. Any questions? Okay. Thank you. Any other opponents? Anyone testifying in a neutral capacity? [LB478]

CRAIG STOVER: Madam Chairman, Senators, thank you for your time here today and hearing this testimony. My name is Craig Stover, C-r-a-i-g S-t-o-v-e-r, and I am the administrator of law enforcement for the Nebraska Game and Parks Commission. I promise to be brief. I'm here today on behalf of the commission to testify in a neutral position on LB478. The commission is not advocating for or against this bill and we're here today at the request of Senator Groene's Office to potentially answer any questions that you may have related to this bill and the commission. So with that, I'd turn it over to you. [LB478]

SENATOR EBKE: Thank you, Mr. Stover. Any questions? Senator Krist. [LB478]

SENATOR KRIST: You heard my question before about the restriction of what I would consider to be something other than a hunting bow. [LB478]

CRAIG STOVER: Yes, sir. [LB478]

SENATOR KRIST: Do you think this covers that in terms of a definition? [LB478]

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CRAIG STOVER: I may not be familiar with all of the equipment that there is out there. I would venture to guess that the majority of equipment that there is out there was probably designed by hunters to be used, or Special Forces as well. I mean the goal of a bow and arrow is to kill something. And so hunters are the most effective ones at doing that. Crossbows are included in all this. However, if what you're talking about would be an electronic crossbow that would require some electronics in order to pull it back, then that would prevent that, yes. [LB478]

SENATOR KRIST: Okay. Thank you. [LB478]

SENATOR EBKE: Senator Baker. [LB478]

SENATOR BAKER: Thank you, Chairwoman Ebke. Mr. Stover, if a person was to procure a license, bow and arrow license to go deer hunting, they apply to the Game and Parks, right? [LB478]

CRAIG STOVER: That's correct. [LB478]

SENATOR BAKER: Do you check to see whether the person is a felon or has been convicted of any crime before...? [LB478]

CRAIG STOVER: No, we do not. [LB478]

SENATOR BAKER: So if they applied for a permit, you would issue it. [LB478]

CRAIG STOVER: That's correct. [LB478]

SENATOR BAKER: Okay. Thank you. [LB478]

SENATOR EBKE: Other questions? Okay. Thank you very much for being here. [LB478]

SENATOR BAKER: Thank you. [LB478]

SENATOR EBKE: Anybody else in the neutral capacity? Senator, if you'd like to close. [LB478]

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SENATOR GROENE: Thank you, Chairman Ebke and members of the committee. My staff contacted Bill Drafting and they will prepare a statement to explain changes and address Senator Pansing Brooks and they will get it to the committee. I won't mention an individual's name who works there but he...they will do that. Why they did it, I believe he's an attorney. As to probation, we checked into that because Ms. Huebner contacted me. The judge decides. The probation officer cannot, which you probably all know that. If the judge thinks the person is violent, he can say you can't go anywhere near bow and arrows or with knives or whatever, even house knives. That's up to the judge and probation. Jeremy's crime had no humans involved. He broke into a place and robbed something. He had no weapon on him. And you all are well aware that a lot of felony crimes are not violent. They're drugs. They're robbery, stealing a car. They never intended in their lives to hurt somebody. Those who want to hurt, as Senator Chambers says, guns are readily available. And if somebody wants to really hurt somebody, you know they will find a weapon to do it even if they're a felon. This bill addresses law-abiding individuals who made a mistake in their life. Do we kick them continually, or do we let them go on with their lives? Is vengeance the reason that the criminal justice system exists, or is that to make them better citizens after they pay their dues. I'm trying to help with this bill those who want to change their lives to be good people. As a Christian society we forgive and we go on. Thank you. [LB478]

SENATOR EBKE: Thank you, Senator Groene. Okay. Have we got questions? Senator Baker. [LB478]

SENATOR BAKER: Thank you. Senator Groene, you heard the previous testimony. If a person applied to go deer hunting, get a bow and arrow permit, archery permit, whatever it's called, as it stands right now how would that person get into trouble...potentially get into trouble? They were issued a permit. They're out there with their bow and arrow deer hunting. How would they get into trouble as it stands right now? [LB478]

SENATOR GROENE: As Mr. Wood said, when they're transporting that bow and arrow and they get stopped for speeding. And let's say they're having a bad day like we all do and lip off and then the officer says, well, what's that in the back seat there? I looked and you're a felon. They can be arrested. If...Mr. Wood, which we didn't because it was a hearsay and say, but there is a Game and Parks Official in the area that has thrown that around that if he catches certain felons with a bow and arrow that he thinks he could arrest them with it. You shouldn't go through life intimidated by what could and should or not be that should be in the statute. Now the Game and Parks official, I wish you would have ask...I'm almost certain they would have to check if they're felons if they tried to get a rifle license. I mean I would assume that isn't a burden to the felon to prove...walk in there and prove. But right now it's been common law that a felon can have a bow and arrow. But we've had the Nguyen case and some other issues come up that needs to be clarified. [LB478]

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SENATOR BAKER: So you think it would be a problem that if a person who had a past felony and they're now served their time, they're on their way to go deer hunting and they get stopped and they do...run the plates, do the background check and they say, here, I've got this permit that says I can legally go hunting, you don't think that would suffice? [LB478]

SENATOR GROENE: I don't think so if the definition isn't there. It's what the attorney for the defense lawyers said. He might be speeding or he might be trespassing. You know, they still make mistakes, go on somebody else's land. And that could be a secondary offense then because they found out the guy was trespassing now he's got a bow and arrow and he all of a sudden gets a secondary offense that he had a...trespassing won't send him to jail, but that bow and arrow could. [LB478]

SENATOR BAKER: Thank you. [LB478]

SENATOR EBKE: Senator Krist. [LB478]

SENATOR KRIST: If we bifurcate the issues and we get clarification on Senator Pansing Brooks's concerns with the domestic violence issue and we just deal with what you and Senator Baker just talked about, the greatest proponent is actually Ms. Huebner's, Diane Huebner's testimony that no one part of this government structure can answer the question. [LB478]

SENATOR GROENE: No. [LB478]

SENATOR KRIST: Not the Attorney General, the Chief Probation Officer, Nebraska Game and Parks, none of them have the same opinion on whether or not it is legal or not legal to do this. So I see the need for clarification, even if it doesn't look exactly like that bill looks like right now. Seems like we do ourselves a favor by defining the issue. [LB478]

SENATOR GROENE: My LA, when we were discussing, preparing for the testimony this morning, that's the comment he made, he's talked to the AG Office, he's talked to the Game and Parks, he's talked to Probation, he's talked to the judiciary and they always say, well, we don't see a problem with it but they all end it with the word "but." And that's not good law. [LB478]

SENATOR KRIST: Yeah. Got it. [LB478]

SENATOR GROENE: Thank you. [LB478]

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SENATOR KRIST: And I just would say also, not to make light of it, but I remember...do you remember watching Bonanza when you were a kid? There was an episode... [LB478]

SENATOR GROENE: Every Sunday night. [LB478]

SENATOR KRIST: Pardon? [LB478]

SENATOR GROENE: Every Sunday night. [LB478]

SENATOR KRIST: Every Sunday night. That's right. Right before Lawrence Welk or right after Lawrence Welk, one of the two. But I remember an episode where Hoss was poo-pooing the arrow and Little Joe said this is the size of the bullet. This is the size of the arrow. Which one do you think is going to do more harm? And just the look of fear on his face when he said, well, the arrow of course. Just thought I'd put that into the record. A little humor. [LB478]

SENATOR EBKE: There we go. Bada boom. Senator Halloran, did you have a question? [LB478]

SENATOR HALLORAN: I hate to admit that I'm old enough to remember Bonanza as well. But, yes, Senator Groene, yes. I'm not one to want to overcomplicate laws because I think most laws are overcomplicated from the start. But there are certain...there are various felonies, various laws have different penalties and different levels of felony. I would certainly have no problem with Mr. Wood's...with theft, but there are some felonies that deal with bodily harm, you know, where people have been accused of and tried and been sentenced under a felony for doing bodily harm and then paroled. Can we delineate between that in this law in some measure? Is there some merit in doing that do you think? [LB478]

SENATOR GROENE: Because if you looked at the definition of felonies, some of them go all the way from assaulting somebody to using a gun to just drug possession under the same class of felony. So usually when we distinguish law, I'm not a lawyer, but I think we do it by classes of felonies. It'd be hard to do. I go back to if you really want to hurt somebody you'll find a way to do it. But a lot of laws... [LB478]

SENATOR HALLORAN: I've considered many ways. (Laughter) [LB478]

SENATOR GROENE: But the point is when you become a law-abiding citizen, laws can restrict you because you do want to obey the laws. This is more of a law I think to clear up that those who want to obey the law can with a good conscience. [LB478]

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SENATOR HALLORAN: Okay. Thank you, Senator. [LB478]

SENATOR EBKE: Any other questions? Thank you, Senator Groene. [LB478]

SENATOR GROENE: I thought you'd harass me more, Senator. Just on the floor. Thank you. [LB478]

SENATOR EBKE: (Exhibits 1 and 2) We have two letters: One opposed from a Debby Linse and one in support from Wes Sheets of the Nebraska Bowhunters Association. We're going to take a five-minute break because we're moving ahead of schedule. I'm going to let everybody kind of filter out, stretch for five minutes and then we'll start. [LB478]

BREAK

SENATOR EBKE: Okay, we're going to open the hearing on LB558. Senator Schumacher. We do have a limit on the length of introduction. (Laughter) [LB558]

SENATOR PANSING BROOKS: How many are here for Schumacher's...? Oh, sorry. [LB558]

SENATOR SCHUMACHER: And you took a five-minute recess? I kind of chewed that up. [LB558]

SENATOR EBKE: We look pretty safe. [LB558]

SENATOR KRIST: Is this going to be the third longest introduction I've ever heard? [LB558]

SENATOR SCHUMACHER: I hope not. (Laughter) [LB558]

SENATOR PANSING BROOKS: This year. [LB558]

SENATOR SCHUMACHER: Thank you, Chairman Ebke, members of the Judiciary Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature and here today to introduce LB558. LB558, as far as I'm concerned, had its origins in an newspaper article that said last May that the Supreme Court has decided that if you had a knife with a blade longer than 3.5 inches, regardless of your intent, you were guilty of a felony of carrying a concealed weapon. And I didn't believe that they really said that, so I got the case out. And they really said that. And if you look at the history of this thing, the Legislature and I'm sure

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law enforcement has struggled with knives and things like that for a long time and back in 2009-- the interesting cases are always the ones to make it up to the court--some guy stole a Cadillac and claims he didn't know what was under the seat but there was a steak knife with a 4.5 inch blade on it. And the court struggled with it as to whether or not that violated the law back in 2009. And they finally, you can tell in the language there, it says really this could apply to way too many people and they said we concluded that to hold otherwise would mean every citizen carrying a kitchen paring knife with a four-inch blade in a picnic basket with other appropriate picnic items would be guilty...would be concealing per se--that means I guess regardless of anything else--a deadly weapon and would be guilty of a felony. And then we reasoned that such a result must not have been contemplated by the Legislature. So to get to that conclusion and, nah, this was not a case of carrying a concealed weapon in that Cadillac they contorted through some series of definitions what they meant by knife and what they thought the Legislature meant by knife to come up with a commonsense solution that probably the Legislature did not mean for anybody who had a knife in a picnic basket or in a gift box or anything like that was guilty of a felony. And the Legislature then in 2009 reworked the wording of the law to make it basically say with unequivocal terms, yeah, if you have something over 3.5 inches long it's a knife and if it's concealed in any way you're guilty of a felony. And another case goes up, this State v. Nguyen case that they decided in May and they said, well, you know, the Legislature can read and the Legislature said they're guilty of a felony. And in their conclusion when you see this you kind of read between the lines of them saying to the Legislature, really? We declined to comment on the rationale for the legislative amendment that defines all knives with blades longer than 3.5 inches as deadly weapons per se for the purpose of carrying a concealed weapon under the law. So when I saw that I said I think the court is trying to say we might want to look at this and clarify things just a wee bit. And this bill that you have before us today was drafted in that way, to try to add back in the element of the knife either being used or intended to be used in a way of producing a serious bodily injury or death. And that language is added in to add to that as an element of the offense--unless you're going to use or intending to use or use the knife in that way, it is not meant to be able to subject you to the charge of carrying a concealed weapon. In the big picture I suppose everyone says, well, gee whiz, you know that if you go and buy a knife set for a wedding gift at Bed Bath and Beyond and it has some bread knives and other knives in there with blades on them and they say would you like to have that wrapped in gift wrap, if you're like me you know you can't wrap anything right anyway (laughter) you're going to say, yeah, wrap it and put a bow on it too. Well, you know, you get stopped and the officer sees the slip there, your receipt, and it says knife set. There's the gift. Being duty bound to pursue probable cause, opens up the gift bag and there it is, more than a 3.5 inch blade, clearly was concealed. And this puts the officer in a position, okay, does he say, really the Legislature didn't mean that, or does he write you up for a felony? And if you happen to be on the outs with the officer of the law or whatever or they just have a real technical kind of prosecutor, there's no out for the judge. There's no out for the jury. The question is very simple: Did you possess a knife with more than a 3.5 inch blade regard...? It's no defense that it was a wedding gift wrapped up

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nice and pretty with a bow on it or a picnic basket or a fishing basket. So what we have now is clearly overbroad, clearly cries out for some type of clarification and to try to get back to what I think the Legislature really means and that is a knife that is in the hands of somebody who's up to no good. And that's my introduction. I hope it was shorter than the last one. [LB558]

SENATOR KRIST: Oh, definitely. [LB558]

SENATOR EBKE: Senator Krist. [LB558]

SENATOR KRIST: In my G-suit when I was flying jet aircraft, there was a little orange knife about this big. And when the contractor was asked to develop that knife as a switchblade, he was asked that hook that cuts the risers would be the switch blade. In fact, he messed it up and the blade was the switch blade. I happened to be in a position where a police officer decided that I shouldn't have a switchblade because it was illegal. In your looking at this issue, are they specifically...are we specifically breaking the law if we have a knife no matter how long that is a switch blade that opens up immediately? [LB558]

SENATOR SCHUMACHER: Doesn't have to even be a switchblade. [LB558]

SENATOR KRIST: Okay, so just 3.5 inches. [LB558]

SENATOR SCHUMACHER: Just a plain old knife if it measures more than 3.5 inches long and it's not visible--whether under the seat of the car or the picnic basket, the gift package, whatever--you're guilty of a felony. [LB558]

SENATOR KRIST: But don't you think it's more egregious to have something that actually opens itself no matter how long or short it is, and does your change actually address that in the manner in which it's used? [LB558]

SENATOR SCHUMACHER: The change here, and I'm not sure, maybe somebody more adept at recent criminal law than I am will say whether or not there's another provision dealing with switch blades specifically. But the change here would say that there has to be some showing of intent that you're going to misuse it or you used it illegally. [LB558]

SENATOR KRIST: Okay. [LB558]

SENATOR EBKE: Senator Baker. [LB558]

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SENATOR BAKER: Thank you, Senator Ebke. Senator Schumacher, do you remember 15 years ago or so when the concept of zero tolerance was being used in school districts? Do you remember that? [LB558]

SENATOR SCHUMACHER: Yeah. [LB558]

SENATOR BAKER: Well, I never, my district never...thought that was ridiculous because it led people to some irrational decisions like a kindergarten student back east somewhere was expelled because he brought a butter knife in his lunch box. Isn't that kind of what we're talking about here? It needs to go to intent. [LB558]

SENATOR SCHUMACHER: Well, that's what this adds. Right now our law does not have intent. [LB558]

SENATOR BAKER: Exactly, exactly. [LB558]

SENATOR SCHUMACHER: And somewhere along the line people who most everybody would think are genuinely innocent and going to a picnic should not have to stumble into a situation where a young officer or maybe an older officer is saying, well gee, this is a felony. I better call a tow truck for the car and give them a free ride to the police station. And even if the prosecutor says, oh really? That was a picnic basket. The officer was doing his job. He saw a felony. And even if it's dropped at that point, that's a great deal of grief to go through. [LB558]

SENATOR EBKE: Senator Pansing Brooks. [LB558]

SENATOR PANSING BROOKS: Thank you, Senator Schumacher. Wow, that was the really long statement of intent there. That was good history for us on Supreme Court law. I'm asking you...I want to ask you about the language if...what about adding something like...you have, "in the manner it is used or intended to be used". What about, or threatened to be used, because if you have somebody...we just...the past bill brought in all the domestic violence stuff. I don't know if you heard, but somehow Senator Groene's bill is all wrapped up in the domestic violence. So now I'm thinking, okay, so before you couldn't have it. Now you...under yours you would be able to have it and you could have somebody say, oh, I didn't use it and, oh, I never intended to use it. But there could be actual thrusting around of a knife that somebody else takes who's a domestic violence victim takes it as a threat to them. [LB558]

SENATOR SCHUMACHER: You know, I suppose we get into splitting hairs on words. But I think you can say or indicates swing a knife around, you probably are intending to use it. But if

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the committee feels that that's a way to fix a problem, to say "or threatens to use it," I don't have any heartburn over that type of a change because I think if you threaten to use it, you shouldn't be threatening such stuff unless you intend to do it. [LB558]

SENATOR PANSING BROOKS: But of course under law, threatening to use and intending to use may be two different standards. [LB558]

SENATOR SCHUMACHER: It could. But in that situation I think that there's also the terroristic threats statute that probably would apply. There's any number of statutes. We've got so many statutes. And when I was prosecuting back in the 1980s before we started adding all this special enhanced stuff, we've got enough statutes that if you do something naughty a good prosecutor can come up with three or four things real easy to throw at you. [LB558]

SENATOR PANSING BROOKS: All right. It seems to me we need to have to have threaten too. [LB558]

SENATOR SCHUMACHER: I don't have any heartburn over that. [LB558]

SENATOR EBKE: Senator Chambers. [LB558]

SENATOR CHAMBERS: When I look at the definition of "knife," it starts in line 15: Knife means knife, because when you get into the definition in line 16 they include the word "knife" again and you don't define a word by itself. But that's the way they draft legislation. But as I read this, a person, the way it's written, a person could have a sword, a person could have a cane with a blade a six or eight inches long and the mere possession of it is not enough to make it a crime; right now the mere possession would be. It's a difficult thing to do when you're giving a definition of an implement like a knife as opposed to a firearm because you can define the mechanism, what it does, and so forth. But this is an inert, maybe it would have been moving parts, maybe not. And the concern that I have about this definition that I had with the original definition is that it puts cops in the position to do what I call making pretextual stops and using something to cause one person to be charged with a crime and another not. Now if a cop has reason to believe or suspect, some stops can be made. They might...a cop could say I was given information that gave me reason to believe that an occupant of this vehicle had an illegal knife because it was shown. And they gave a description of the car and a description of the person and I thought that the description they gave fit this car and the person was in it. And maybe they didn't talk to anybody. They wanted to stop the car with me in it. And then they could use this when I didn't have a knife and they knew I didn't have a knife but they wanted to do something else. So the reason they give for having stopped the car was because somebody said that a person in that car has a knife, but they really think I might have drugs on me but they can't see the drugs

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in the car. I haven't done anything. But once they make the stop then they can take additional action and a suspicion can be created and therefore they make a drug arrest on me whereas they used this notion of a knife for it. So I can see where this kind of definition is better than just having what's in the statute now. And I think in the same way any implement can be used for a purpose other than that intended. Like antifreeze is supposed to go in a car. But somebody can put it in a drink and since it's sweet it may not even be detected. But possessing antifreeze is not a crime. I would rather see something along the order of what's being put here than just leaving it the way it is now. And that's to indicate that in my mind I don't see it as clear cut one way or the other. It's selecting which is the lesser of the evils, if that word would be applied. I don't even have a question, but if you want to respond to what I've said you can. [LB558]

SENATOR SCHUMACHER: Well, I think the way we have it now we basically pretty much have unfettered discretion in the executive branch to decide who's guilty and who's not if they happen to have a fishing knife in a fishing box and that whenever you can have the executive branch pretty much with unfettered discretion decide I like you but I don't like you, that's not a good thing and that's not good law. [LB558]

SENATOR CHAMBERS: And the way it is now, the guy or the woman could have a knife that goes along with his or her profession. That person could be a meat cutter and takes knives home. And if it's known then under current law, that person is guilty of the felony if it's in a sack, if it's in a holster, or any other thing. So I would rather make it less easy for a pretextual stop and that's what this new language would do. [LB558]

SENATOR SCHUMACHER: Now your question did, as you were asking it or your comments, about the circular definition of knife--a knife is a knife--I guess a knife is a knife, but is something like an ice pick a knife? And I don't know how...but I do think that... [LB558]

SENATOR CHAMBERS: There is no such thing as an ice pick knife. You don't know what an ice pick is. It doesn't have a cutting surface. An ice pick is a long needle and you chop ice with it. [LB558]

SENATOR SCHUMACHER: Right. It could poke you really good. [LB558]

SENATOR CHAMBERS: But when Jake LaMotta's father gave him one...Jake would always come home beaten up. And his father finally told him if you come home again crying then you're going to get something from me. And he gave his son an ice pick. He said now if anybody threatens you then you use this. So Jake went to school and when somebody was going to bother him, he flashed the ice pick and they left him alone. And in later years he said that gave me a sense of power and now the shoe was on the other foot because when I went to school I was

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afraid of all of them; when I showed my ice pick, they were afraid of me. He didn't say whether he ever used it or not. But an ice pick can serve more than one purpose. It can actually ice a person's attitude towards you. So there you go. [LB558]

SENATOR EBKE: Senator Halloran. [LB558]

SENATOR HALLORAN: Well, being the newbie here, I'm more than willing to make a fool of myself. But it seems like intention is always a difficult question to answer in a court of law. And that's been brought up at some level here. But to me it seems just incredibly vague. I don't know what your intentions were for bringing this bill, Senator, but I have some idea. So how do we judge...it seems arbitrary and capricious for anyone to judge what the intended use of an instrument might be. My intentions might be different than yours. If I've got a knife, it may have a different perceived intention on my part than what you perceive it to be. [LB558]

SENATOR SCHUMACHER: And the intention is that it be used in stabbing somebody essentially. Now, how do you prove that? Well, how do you prove anything? The situation I can almost bet you the prosecutor would not be able to prove to a jury you had the intention of stabbing somebody if that knife was in the wedding package or if the knife was in a picnic basket or if it was in what common sense would be. On the other hand, if you were running away from the police with a bag of marijuana and that knife was...or cocaine or something and that knife was in the vehicle along with other implements of defense or brass knuckles and stuff, I pretty well have to figure that the jury is going to make with its common sense saying, yeah, we know that the intent wasn't to cut bread. [LB558]

SENATOR HALLORAN: What if I sloppily wrapped it in Christmas paper? [LB558]

SENATOR SCHUMACHER: Well, then you're guilty for sure. [LB558]

SENATOR HALLORAN: Okay. Thank you, Senator. [LB558]

SENATOR CHAMBERS: And if I may because although I'm trained in the law, I don't practice law so I'm going to speak as one civilian to another to Senator Halloran. The way it is now, if they catch you with this knife you're guilty already. You don't have a defense. With this language you can at least launch an offense when they arrest you and put you on trial. [LB558]

SENATOR HALLORAN: A defense. [LB558]

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SENATOR CHAMBERS: You can say the blame was this and this; however, I can prove that I didn't have it for a wrongful purpose. The way it is now, no matter what you say you're guilty if you actually possess it and it's concealed. That is a concealed weapon, no defense whatsoever, you're guilty. [LB558]

SENATOR HALLORAN: I understand. [LB558]

SENATOR CHAMBERS: Oh, okay. [LB558]

SENATOR HALLORAN: Thank you. [LB558]

SENATOR EBKE: Thank you, Senator Schumacher, for bringing this. I just want to tell you that there are at least two men in my household, a 13-year-old and a not 13-year-old, who are very thankful because as Boy Scout, my husband is a Boy Scout, assistant Scoutmaster, my son is a Boy Scout. After this case came out last year, they were pulling out all the pocket knives to measure the length of the blades because some of the boys were just over the edge. And so, nope, can't bring that one to camp. So I think intent is an important thing for us to consider here. So thank you for bringing the bill. [LB558]

SENATOR SCHUMACHER: Thank you. [LB558]

SENATOR EBKE: Do we have proponent testimony? [LB558]

SPIKE EICKHOLT: (Exhibit 2) Madam Chair, members of the committee, my name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of this bill. We want to thank Senator Schumacher for introducing it. I'm not going to restate what Senator Schumacher said. I think due to his introduction and the questions from the members of the committee I think that the committee sees the issue. I'm having distributed just some recent examples of some cases. They're all here in Lancaster County. I just asked some lawyers in the office if they have some recent concealed weapon cases. And I have the names and case numbers for you to look at. I mentioned this before on Senator Groene's bill. What we're seeing is that the prosecutors and officers are citing people as like a second or a third charge, carrying a concealed weapon. So for instance, someone was arrested for shoplift charge. They're taken to the jail. In their purse they find a knife and they're getting a second charge. That may not seem too egregious but it is sort of a doubling over criminalization of behavior. Concealed weapon conviction, many times it'll be just a fine. The judge sort of sees that it was sort of for an innocuous purpose. But a concealed weapon conviction, it sounds pretty bad when you have to disclose to an employer you've got a

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concealed...I was arrested for carrying a concealed weapon. And you can talk about how it was just a knife and it was for a steak knife. But that's just not the kind of thing that you want to be talking about in an employment interview, even if the employer believes you. But in any event, we're seeing a lot of those citations and charges. I think what Senator Chambers says is right. The crime is committed when the officer discovers a knife with a blade more than 3.5 inches on or near person. That's it. That is contraband. That's like finding drugs. It's like finding any other illegal item or evidence of a crime and the officer has the authority as he or she decides to continue a search or detain somebody or what have you. With a broad statute like this that provides for really unlimited discretion that the officer and the prosecutors have. Now State v. Nguyen was decided in May of 2016. The issue, and even though the court was critical of the statute, the court did not address the constitutionality of this definition. That could very well...the Legislature doesn't do anything. That could be something that happens. In other words a person could be charged with a knife and argue that this statute is just so overbroad no one knows what it means. It fails to give notice and therefore it should be struck down as unconstitutional. And if that happens then you don't have a definition of knife that could be used really in any, even of the deserving situations. So we would suggest respectfully that the committee try to narrow this definition in response to what the court sort of indicated it should do. [LB558]

SENATOR EBKE: Questions? Thank...Senator Chambers. [LB558]

SENATOR CHAMBERS: No, no. I'm fine. I don't have any. [LB558]

SENATOR EBKE: No. Okay. Thank you. Any other proponents for the bill? Do we have any opponents? We have anybody testifying in a neutral capacity? Senator Schumacher. Senator Schumacher waives. We have... [LB558]

SENATOR KRIST: I can't believe we've just gone two hours without somebody saying that's not a knife, that's a knife. (Laughter) [LB558]

SENATOR EBKE: (Exhibit 1) We have one letter in support (sic--opposition) from Isaac Brown of the Police Officers' Association of Nebraska. That concludes the hearing on LB558. Thank you all for being here. [LB558]