

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

[LB81 LB138 LB143 LB491 LB692 LB695]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 2, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB138, LB143, LB81, LB491, LB692, and LB695. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Good afternoon. I'm sorry we're just a bit late, five minutes late. We usually have been starting on time so I apologize. It's my fault. I made the mistake of jogging at lunch and I froze.

SENATOR McDONALD: Oh, you silly man.

SENATOR ASHFORD: Yeah. They had to come to undo me or un-ice me, de-ice me. Thank you for coming today. My name is Brad Ashford. I'm Chair of the Judiciary Committee. Welcome. Senator McDonald is here; Senator Pirsch; Senator Pedersen; Senator McGill; Senator Chambers. And Jeff Beaty is my legal counsel to my right, and Jonathan Bradford is the clerk of the committee. We have a few ground rules and many of you have been here so I don't want to sound too repetitive, but some have not been. We have a sign-in sheet that's going around and we'd ask you to sign that sheet. And you may sign it whether or not you desire to testify or not so you're free to sign the sheet and state your position on any particular bill. We have a light system that I have inherited from prior chairs and it gives you an indication of your time. We'd like you to limit your testimony to about three minutes and the yellow light will indicate that you have about a minute left and the red light is the stop light. And you don't have to stop mid sentence, but we'd ask you to wrap up when the red light comes on. We have a number of bills today so we should get started. The first bill is LB138. Let me ask how many people are here to testify on LB138? Okay. Why don't we...Senator Flood is here so, Speaker Flood, would you proceed.

SENATOR FLOOD: Thank you, Mr. Chairman and members of the Judiciary Committee. My name is Mike Flood, F-l-o-o-d, and I represent Legislative District 19 which includes the city of Norfolk and all of Madison County. I specifically mention Norfolk today because LB138 is the result of something that recently occurred at the Norfolk Regional Center. On March 3, 2006, Regina Seamann was brutally attacked by a patient at NRC. She was beaten so badly that she does not even remember much of the event. She was broken, bloodied, and bruised, to this day still suffers from chronic pain and post traumatic stress disorder. And where is her attacker now? Back on the streets we think, but nobody seems to know where for sure. This man, a sex offender who was at the Norfolk Regional Center for mental health treatment, was charged with a misdemeanor for his actions last March. He was sentenced to one year in prison and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

was out after five months and, again, he is out there somewhere. Today I offer LB138 for your consideration. My intent here is to ensure that dangerous sex offenders committed under the Sex Offender Commitment Act are held accountable for their conduct during the period of their confinement. That being said, I acknowledge that LB138 would not have kept Mrs. Seamann's attacker behind bars any longer than he was. Again, at the time of the attack, he apparently was at the Norfolk Regional Center under a civil commitment order. Yes, he was a sex offender; but, no, he had not been committed under the Sex Offender Commitment Act, which did not even take effect until last summer. Mrs. Seamann is here today to testify and she understands the limitations of LB138. Nevertheless, I share her concern for the folks at our treatment facilities who are working with dangerous sex offenders. For that reason, I introduced LB138 which does four main things. First, in Section 1 it provides that a dangerous sex offender is subject to a felony charge if that offender escapes either from the facility to which he or she was committed or while being transferred to such facility. An escape under these circumstances is deemed a Class III felony. Next, Sections 2 through 5 of the bill propose to add employees of public or private treatment facilities to the list of those folks who are protected by our assault on an officer statutes. Individuals who engage in conduct prohibited by these sections are subject to a felony charge. Before I go any further here, I would like to offer an amendment (Exhibit). AM193 proposes to narrow the scope of my new language in Sections 2 through 5. My intent here, as in other sections of the bill, was to ensure that dangerous sex offenders are held accountable for their actions during the period of their confinement. The new language in the green copy of LB138 is a little broader than I intended and I, therefore, submit AM193 for the committee's consideration. LB138 also amends another assault provision that applies to those individuals who are confined in our jails. In Section 6, I propose to extend the scope of this assault provision to include those who are confined at a treatment facility pursuant to the Sex Offender Commitment Act. Finally, in Section 7 of LB138 I propose to make information about Level II sex offenders available to neighbors who live within one-tenth of a mile from the residence of those offenders. My intent here was to simply ensure that parents and those responsible for our vulnerable adults were aware of the potential dangers in their neighborhoods. At this point, however, I would be amenable to removing this provision of the bill. I understand that there are approximately 720 Level II sex offenders in the state at any one time. And after discussing this issue with the State Patrol, I realized how difficult it could be to implement Section 7, particularly in the densely populated urban areas of our state. I recognize the manpower this would require and given the Patrol's limited resources, I am not sure this is manpower we can spare. I also understand that Congress recently passed a bill that will likely affect our sex offender registration and notification provisions. The Patrol reports that they will be studying the Adam Walsh Child Protection and Safety Act of 2006 over the next year and may recommend changes to ensure our state laws comply with this act. I have briefly reviewed summaries of the act, and I suspect my concerns regarding notification will be addressed in the near future as the act is implemented on a state level. For these reasons, I would be comfortable if Section 7 were stricken from the bill. One final

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

comment on my amendment. On page 4, lines 9-10, you will see that I propose to strike the phrase "as a dangerous sex offender" from Section 1 of the bill. That phrase appears to be redundant as it is part of the standard required to commit an offender under the Sex Offender Commitment Act. I, therefore, suggest that it be removed from the bill. With that, Chairman Ashford, I conclude my opening remarks on LB138. I would be happy to answer any questions the committee may have. [LB138]

SENATOR ASHFORD: Thank you, Speaker Flood. Any questions of Speaker Flood? Thank you. Do you wish to close? [LB138]

SENATOR FLOOD: If I may, I would like to waive closing. [LB138]

SENATOR ASHFORD: Okay. Proponents of LB138. Thank you. Senator Lathrop has joined us and Senator Schimek so we're all here. Go ahead. Good afternoon. [LB138]

REGINA SEAMANN: (Exhibits 1, 2) Thank you, Speaker Flood. My name is Regina Seamann. I'm an RN and I've worked in the mental health field for over eight years. Most of these have been at the Norfolk Regional Center. On March 3, 2006, one of the patients received another smoking infraction for smoking in his room. His door was locked per policy. He was joking about how funny it was that he got a smoking infraction and immediately wanted to go to his room. He was allowed to, he returned, and then immediately came up to the office where one of the techs and I were in there, requesting to go back to his room again. I started to remind him that he needed to get everything out, but he started yelling at me, saying, why are you always picking on me, grrrr. I knew he was going to assault me. The next thing I remember was my face was cut clear through and I was trying to hold the two pieces together. I was bleeding from the back of my head, my face, and my right eye. I had finger bruises marks on my neck. My chest was sore and bruised. And later bruises would appear on my back and on my hips. He was not psychotic. He is an antisocial sex offender with an anger problem who assaults to get what he wants. He's been in prison four times now. I have nightmares of someone attacking me, I have flashbacks, and I disassociate. I still get paranoid and anxious around crowds. I have some short-term memory loss. I have pain most of the time in my back, neck, and head. I have trouble swallowing at times due to how he was choking me. I see a pain doctor, a psychiatrist who says I need to change jobs or change my occupation, I go to physical therapy and to a counselor. I will be on medicine probably the rest of my life. I have a traction and an electrical impulse machine to use for pain. I love to water ski, but I'm no longer able to do this. I cannot vacuum or carry things due to the injuries. We have five grandchildren, three of them you see. I love to hold them and carry them, but this, too, causes pain as does pushing the kids on the swings or jumping on the trampoline with them. I get fatigued and must rest often. I'm unable to drive more than a few blocks so my husband has to take off work and drive me. I miss having the freedom to drive wherever I want to. The injustice of the system has caused a lot of frustration and anger such as when the doctor orders a medication

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

for me and workmen's comp will not pay for it. Or I'm doing a treatment and it's working and I'm starting to feel better and getting off of some of my meds and then workmen's comp tells me I can't go anymore. Nine months after March 3, through therapy, I was able to start to remember some of the assault. After 11 months, I have now been able to try to work an 8-hour day and that was just this last week. If I would have been assaulted this bad anywhere else, it would have been a felony. But because it happened at Norfolk Regional Center, he received a misdemeanor and was out of prison in five months. He is walking the streets as a sex offender who has not registered. He is free to assault again. The staff in these facilities care about the patients and are there to help them, but they need to be protected from people like this. And we need to send a message to the assailants that there will be consequences for their actions. Thank you. [LB138]

SENATOR ASHFORD: Thank you, Regina. Any questions? Senator Pirsch. [LB138]

SENATOR PIRSCH: Thank you for coming here today. Ultimately, what was this individual prosecuted under, if anything? [LB138]

REGINA SEAMANN: It was an assault in third... [LB138]

SENATOR PIRSCH: A simple misdemeanor assault, is that correct? [LB138]

REGINA SEAMANN: Um-hum. [LB138]

SENATOR PIRSCH: Currently statutes in Nebraska draw a distinction between those assaults causing serious bodily injury and those that don't is the distinction between a felony and a misdemeanor. Do you know why they chose to...that it was prosecuted under a misdemeanor (inaudible) as opposed to what it seemingly based upon what I've seen here in the photos, serious bodily injury? [LB138]

SEAMANN: Yes. He has a diagnosis of a schizoaffective or one of those major mental illnesses and that's why I brought up in there that he was not psychotic. He is a huge drug and alcohol user and sometimes these things cause them to be psychotic and it's hard to tell the difference. I'm not a doctor so I can't tell you exactly, but he was not psychotic at all. We were looking at discharging him, getting ready for discharge. [LB138]

SENATOR PIRSCH: So it had to do more with the intent as opposed to the nature of the injuries. [LB138]

REGINA SEAMANN: Yes. He had told some others that he wanted to kill me and that they should not interfere. [LB138]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR PIRSCH: I'm sorry. (Inaudible). [LB138]

REGINA SEAMANN: And that they should not interfere. So...and there was only one staff member available to help me at the time and he kept throwing her across the room. [LB138]

SENATOR PIRSCH: Well, thank you so much for coming down here today, really appreciate it. [LB138]

REGINA SEAMANN: My daughter would like to testify on how it affected the family and then my husband was going to talk about the community. Thank you. [LB138]

SENATOR ASHFORD: Thank you, Regina. You can go ahead if you're ready. [LB138]

DAWN MICHELLE HARRINGTON: (Exhibits 3, 4) Good afternoon, ladies and gentlemen. My name is Dawn Michelle Harrington. I am Don and Regina Seamann's daughter. Like my parents, this nightmare began for our family on the afternoon of March 3, 2006. I had been trying to call my parents all day and was just starting to get worried when my dad called to tell me that he was in the ER with my mom. As he explained what happened, I sat in stunned disbelief. The next time I saw her, she was almost unrecognizable. Her right eye was severely bruised and almost swollen shut. Her lip was swollen and she had several stitches. Our boys, 10, 3, and 5, asked what had happened to Nana. We explained to them that a very bad man had hurt her. They were worried that they would hurt her even more by even giving her a hug or a kiss. Since the assault on my mother, all of our lives have changed drastically. The things we used to enjoy doing together are now very difficult for her. She gets anxious and scared in crowds. Taking her to a hockey game is now a frightening experience for her. Every time there is a fight, she has flashbacks to her attack and sits paralyzed with fear in her seat. Even an afternoon shopping is difficult. Again, the crowds in the store are scary. Pushing a shopping cart is painful as is carrying anything, including the kids. Our boys know that she was hurt, but they still do not understand why she cannot hold them in her arms, jump on the trampoline with them, push them on the swing, lift them into the boat, or do many of the other activities they used to enjoy doing together so much. Now our six-year-old son wants to know why Nana cannot teach him to water ski this summer, something he's been looking forward to learning from her for three years. It's hard to believe how much the actions of this one man have changed our lives so much. My parents used to enjoy entertaining at their gorgeous home by the lake. Now even having the kids' birthday parties there is too difficult for my mother. My mom used to enjoy sewing. Now it is too painful for her to sit at the sewing machine long enough to even finish a simple project. She made the beautiful baptismal gown you see in the picture for my daughter two years ago and she has already voiced doubts about her ability to make another one if this baby is a girl. She also used to enjoy making unique cross stitch quilts for each of the grandchildren. She hasn't even been able to start one

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

for my niece who was born in October or this baby who is due in June. To add insult to her many injuries, the man who did this to her spent less than five months in prison. Because this happened at the regional center, he was charged with just a misdemeanor, a slap on the wrist for him and a slap in the face for us. There needs to be stricter consequences for those who choose to assault the people working so hard to make our communities a safer place to live. Thank you. [LB138]

SENATOR ASHFORD: Thank you, Dawn. Any questions of Dawn? Thank you for coming. Next proponent. Oh. Hi, Mr. Seamann. Go ahead and start whenever you're ready. [LB138]

DON SEAMANN: Hi. I'm Don Seamann. My bride of 30 years is Regina Seamann back here. I would like to take you back to March 3, 2006, when my wife was assaulted. I was down having the tires changed on my car. I received a phone call that Regina had been assaulted at NRC. They said could you come quickly and take Regina to the hospital. There's not enough staff for anyone to take her. I was unable to go. My car had no tires on it. If there's no one there, I said, call an ambulance. One of the directors volunteered to take her to the hospital. Shortly after I arrived at the hospital, Regina arrived. When I seen her, I was confused on why she did not come by ambulance. The pictures you have in front of you were taken a couple of days after she was cleaned up and stitched up. She looks much improved by then. A short time later, a police officer showed up to investigate. We could tell something was wrong. As he filled out the papers, he took pictures and told us how his supervisor officer had radioed him saying, go to the hospital and get a statement. He said he was told to remember that she is just an RN at NRC who had been assaulted by a patient and that this was just part of her job. He apologized and said something like the laws have to change as no one deserves this. No one goes to work to be assaulted. Two months later, we met with the county attorney who was preparing this case. We were told the charged would be a misdemeanor. Regina had permanent scars so it should have been a felony. He said the law had to be changed. People like this should have to pay more restitution for the crimes that they commit at the regional center. At the trial after Regina testified, the judge asked if the client knew how lucky he was only being charged with a misdemeanor. He answered, yes. The judge said, this should have been a felony. He was sentenced to the maximum of one year of which he served five months and is out walking the streets with location unknown. He is a sex offender who has not registered. Thank you, Senator Flood and all of you, for listening to this testimony. [LB138]

SENATOR ASHFORD: Thank you, Mr. Seamann. Any questions of Mr. Seamann? Thank you for coming down and bringing your family. [LB138]

DON SEAMANN: You're welcome. [LB138]

SENATOR ASHFORD: Any other proponents? Chris. I'm sorry. [LB138]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

EDWARD E. VAREJCKA: Senators, my name is Edward E. Varejcka. I'm a nurse supervisor at the regional center in the sex offender services. I'm here in support of this legislative bill introduced by Senator Flood and basically here for any questions that you may have regarding sex offenders in general. While I can't answer on behalf of HHS department, I can answer on behalf of my personal experience dealing with sex offenders in the regional center itself. [LB138]

SENATOR ASHFORD: Thank you. Any questions? Senator Pedersen. [LB138]

SENATOR PEDERSEN: Thank you, Senator Ashford. Thank you for coming. In general are sex offenders violent? [LB138]

EDWARD E. VAREJCKA: In general, the majority of sex offenders are not outwardly violent while they're in our care and custody at the regional centers. However, they do become violent at times when confronted with certain behaviors that need to be changed. [LB138]

SENATOR PEDERSEN: And the staff is not usually enough there to handle that when they become violent? Is that some part of the staffing problem too? [LB138]

EDWARD E. VAREJCKA: At times it is a staffing problem, yes. Due to the regional center's staffing...they go by acuity, and when things are quiet, just like a general hospital, you staff accordingly. Unfortunately, we cannot say that, well, so-and-so was upset last night. He may be upset again so we need to pull an overtime staff member to give us additional staffing in case someone would get upset or violent. We can't do that. [LB138]

SENATOR PEDERSEN: In case of the offender in this, like this, I don't know much about it personally, if we'd had this law in place, do you think he would have thought of that first before he committed the assault? [LB138]

EDWARD E. VAREJCKA: I believe so. I truly believe so. I think if you look at statistics, especially after the federal government made it a felony to assault federal officers in institutions, their crime rates when down also. I think that our offenders are fully capable of understanding the law and take that into consideration. [LB138]

SENATOR PEDERSEN: According to testimony, this guy has already been in prison four times. Is that right? [LB138]

EDWARD E. VAREJCKA: That's what I understand. [LB138]

SENATOR PEDERSEN: Isn't it funny that he hadn't been considered as a habitual

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

criminal, that many years? [LB138]

REGINA SEAMANN: He had not been in prison (inaudible). [LB138]

SENATOR PEDERSEN: I'm sorry, ma'am. You can't testify unless you're on the mike. I'm sorry. I had just some questions I had because the violence itself I have no problem with. It's got to be stopped. It can be. But I've worked in mental institutions, too, and you've got to have the staff there that's going to be able to handle that. And I think it's a serious staffing problem without a doubt. [LB138]

EDWARD E. VAREJCKA: I agree. [LB138]

SENATOR PEDERSEN: Thank you. [LB138]

SENATOR ASHFORD: Thank you, Edward. Any other questions of Edward? Thank you for coming down. [LB138]

EDWARD E. VAREJCKA: Thank you. [LB138]

CHRIS PETERSON: (Exhibit) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Chris Peterson, P-e-t-e-r-s-o-n, chief administrative officer for the Health and Human Services System. I'm here to testify in support of Sections 1-6 that apply to HHSS of LB138. In 2006, the Legislature passed LB1199 which included the Sex Offender Commitment Act. That act provided for the civil commitment of dangerous sex offenders as they are released from prison sentences with the Department of Correctional Services. It gave Health and Human Services the role of treating both mentally ill persons diagnosed with pedophilia and a new population, persons with personality disorders and two or more convictions for sex offenses. This expansion of prior duties has caused Health and Human Services to serve a more dangerous and potentially more violent group of persons who understand the nature and consequences of their acts. LB138 amends the criminal code to make it a Class III felony for someone committed under the Sex Offender Commitment Act to escape from treatment. It is currently not a crime for a dangerous sex offender to escape from civil treatment. And I would acknowledge certainly Regina here for the assault that happened to her. The gentleman that committed this assault would not have fallen under this bill because he did not fall under LB1199. He was there on a behavioral health commitment act. This bill is intended, though, to address such incidents as the assault that occurred last August on Dale Clark, a psychiatric tech II at the Norfolk Regional Center. Mr. Clark was struck in the face by a sex offender as part of an escape attempt. Three bones in Mr. Clark's face were broken. He was hospitalized, underwent surgery, and was off work for six months (sic) before the assault. Fortunately, the patient was quickly apprehended. LB138 would make the penalty for such an assault the same as for an assault on a peace officer, probation

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

officer, or Department of Correctional Services officer. It is also limited in its scope to have no application to persons committed under the Mental Health Commitment Act who suffer from mental illness and may not understand the nature and consequences of their acts. LB138 provides consequences for dangerous sex offenders if they choose to escape or assault treatment staff. It protects the public from sex offenders who would choose to escape from treatment by returning them to a more secure environment: prison. And it sends a clear message that the state cares about its employees and will take action to protect staff who are assaulted by dangerous sex offenders. We support LB138 with Senator Flood's amendment to delete Section 7. And I'd be glad to answer any questions. [LB138]

SENATOR ASHFORD: Thank you, Chris. Any questions of Chris? Thank you. Other proponents? Opponents? Neutral? [LB138]

AMY MILLER: (Exhibit) Good afternoon. My name is Amy Miller. My last name is spelled M-i-l-l-e-r, and I'm legal director for ACLU Nebraska. And I'm here solely to testify against the Section of LB138 that Senator Flood has already indicated he would be willing to drop from the bill, that's Section 7 regarding neighbor notification. One reason that we think this is inappropriate, it simply doesn't fit with the rest of the bill and certainly does not address any of the harms that were described to you earlier today with the previous testifiers. Further expanding the pool of individuals who are subject to neighbor notification and publicizing people who have had past sexual offenses is probably a well-intentioned effort to keep children and communities safe. But statistics show that they actually decrease community safety. As you know, the ACLU opposes the general registration scheme as a whole. But as you'll see in the first footnote, the citation there has quoted studies from both Minnesota and Florida finding that restrictions on where sex offenders can live, community notification is likely to interfere with the sex offender's likelihood of returning as a rehabilitated individual to society. They're more likely to be homeless, transient, have job instability, and as a result community has lost the ability to supervise them. The Association for the Treatment of Sexual Abusers has collected statistics and studies and found out that about one-third to one-half of sex offenders who are subjected to community notification schemes, such as suggested in Section 7 here, result in the loss of job or home, threats or harassment or property damage. We think that thus community safety is actually prohibited. Finally, it's also simply a feel-good measure that doesn't actually protect children. There is a myth that most people who are offended against by a sex offender it's the stranger lurking in the bushes and that by notifying neighbors they can be on the lookout for these bad guys. In actuality, on page 2 of my testimony, footnote 3, you'll see that actually most children who are sexually molested know their attacker very well. It's someone who is a family member, a neighbor, a school or church member. It is not the stranger lurking in the bushes. In fact, the studies indicate that 90 percent of girls who are sexually assaulted know their attacker; 85 percent of boys who are sexually assaulted know their attacker. Again, if we're then wasting resources and warning

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

parents about the stranger down the street we're abandoning our obligation to come up with better education tools to actually protect children. Therefore, we'd urge you to take Senator Flood's suggestion and to drop Section 7 from LB138. [LB138]

SENATOR ASHFORD: Any questions of Amy? Thank you. [LB138]

AMY MILLER: Thank you. [LB138]

SENATOR ASHFORD: That concludes the hearing. I believe Senator Flood waived closing. Thank you all for coming. The next bill is LB143. Senator McDonald. May I ask how many are here to testify on LB143? Okay. Good. That's a good number. Thank you, Senator McDonald. You can go forward. Go ahead. [LB138 LB143]

SENATOR McDONALD: Ready? Mr. Chairman, members of the Judiciary Committee, my name is Vickie McDonald, and I represent the 41st Legislative District. I bring you today LB143, an important bill that will help victims of sexual offenses feel free to come forward to report the crimes perpetrated against them. This legislation is also necessary for Nebraska to keep its federal grant funding that ensures law enforcement across the state is equipped with the training to help victims of sex offenses. Nebraska has been fortunate to receive grant funding from the United States Department of Justice Office on Violence Against Women to implement important domestic violence programs. The grant funds are distributed between the Nebraska Domestic Violence and Sexual Assault Coalition, the Nebraska State Patrol, and the Nebraska Department of Justice. In 2006, \$487,372 in grant funding was received. Throughout 2006, these organizations met with law enforcement and probation officers, victim advocacies, medical and emergency personnel, and prosecutors at a series of conferences across the state. These meetings held from McCook to Wayne helped rural communities develop better coordinated responses to sexual assault and domestic violence. Four conferences and 14 presentations later, nearly 500 public servants across the state are better trained and more prepared to respond to sexual assault and domestic violence incidents. This funding which has been such a powerful benefit to our state could dry up unless we pass new legislation to conform to the federal guidelines. LB143 will do that. The bill prevents the use of polygraph testing of victims of sexual offenses as a condition for proceeding with the criminal investigation. In Nebraska, we are fortunate enough to have law enforcement officers that do not use polygraph testing as standard practice for determining whether a sex crime investigation should be launched. We also know that the last thing the victims need is to feel like their integrity might be questioned when they file a police report. Nebraska doesn't want to be part of victimizing them twice--once by their assailant and again in the process of pursuing justice. It is particularly important that victims don't stay silent when they've been sexually assaulted. According to the Nebraska Crime Commission, 566 forcible rapes were reported in 2005. The latest national crime victimization survey by the United States Department of Justice shows that an average of 59 percent of rapes over the last five

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

years have not been reported. That's too many. Nebraska can have the best laws against sexual offenders on the books, but one thing will stand in the way of bringing these criminals to justice and that's not reporting rape. We can take sexual offenses seriously in our state and victims should feel that way, too, from the moment they file a report until their assailant is put behind bars. Thank you for your time and attention. [LB143]

SENATOR ASHFORD: Thank you, Senator McDonald. Any questions of Senator McDonald? Thank you. [LB143]

SENATOR McDONALD: Thank you. [LB143]

SENATOR ASHFORD: Any proponents? [LB143]

COREY O'BRIEN: (Exhibit 5) Good afternoon. Thank you, Mr. Chairman and senators of the Judiciary Committee. My name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n. I'm an Assistant Attorney General with the Nebraska Attorney General's Office. Today it is my honor to appear on behalf of the Attorney General's Office and because of our longstanding cooperation with the County Attorneys Association, I'm also here appearing on behalf of the County Attorneys Association to express support of LB143. With the passage of LB143, the Nebraska Attorney General's Office, Nebraska State Patrol, and the Nebraska Domestic Violence and Sexual Assault Coalition will remain eligible for approximately \$540,000 in federal grant money that is due during the next biennium. In addition, law enforcement and county attorneys across the state will remain eligible for over \$4.5 million in federal funds that it currently receives and that they hope to receive over that same time period. Beginning in fiscal year 2007, Congress has condition receipt of these funds on the adoption of a practice such as that embodied in LB143. That is, in order to continue eligible for these funds, we must adopt a policy consistent with what is within the confines of LB143. I provided a copy of the language of the federal statute that requires this new law. Given the recent disappearance of federal Byrne grant dollars from the asset column of most law enforcement and county attorneys' budgets, the importance of passing LB143 is heightened even further. Most importantly, though, LB143 is, simply put, good policy and will hopefully help us in law enforcement in our ongoing efforts to foster an environment that does not discourage victims from reporting the crimes committed against them and instead will empower them with the strength to finger their perpetrator. On behalf of myself, Attorney General Jon Bruning, and the Nebraska County Attorneys Association, I would like to thank Senator McDonald for sponsoring this most important piece of legislation. At this time, I'd be happy to entertain any questions the committee may have for me. [LB143]

SENATOR ASHFORD: Any questions of Corey? Thank you, Corey. [LB143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

COREY O'BRIEN: Thank you. [LB143]

JERRY SOUCIE: (Exhibits 6, 7, 8) Mr. Chairman, my name is Jerry Soucie. I'm an attorney with the Commission on Public Advocacy. I appear here today, though, in my personal capacity as a citizen and as an attorney with 26 years of experience. And I do not speak on behalf of the agency or anyone else except myself. The reason I'm here in support of this bill is I believe that it is time that we recognize that the polygraph is a failed instrument for truth telling. And what I'm passing out to the committee is a study that was done by the National Research Commission, which is the research agency of the American Academy of Scientists, pointing out that the polygraph device as a truth-telling device is really nothing more than voodoo. You could get as good of results with a Ouija board as far as I'm concerned. The second article relates to a study done by a Professor Iacono coming to the same conclusion. And lastly, I provided a summary of my experience recently in a case out of Cass County involving what's called the Murdock case in which polygraphs were repeatedly, repeatedly abused in that particular case to obtain a false confession from a young man with mental retardation, actually two of them. My experience with polygraphs over the years has been they shouldn't be used on crime victims, they shouldn't be used on suspects, they shouldn't be used period. My experience started with the first case which was the Simpson-Surber case in which two boys were murdered at the Lincoln Fairgrounds. As part of that investigation, a transient named William Guatney was picked up and he was polygraphed by an instructor at the Reid Polygraph Institute, which is one of the major polygraph training institutes in the country. At the end of that polygraph examination, the examiner testified under oath that he would stake his reputation on the fact that Mr. Guatney had committed a murder in Topeka, Kansas, of a young boy similar to the ones done in Nebraska. They had an eyewitness who identified Mr. Guatney as being with the young boy leaving a bowling alley. After he was confronted with the polygraph examinations, Mr. Guatney confessed. When we had that case, we later found out that in fact at the time of the murder he wasn't anywhere near Topeka, Kansas. He was in Illinois, approximately 300 miles away, in a mental institution. The second case I had involved the Ralph Quador murder, a situation in which they did exactly the same thing. They used the polygraph to confront my client. She then falsely confessed. Her facts didn't...her confession didn't fit the known physical facts and it took...she was in custody for about nine months until we were able to get her released when the judge ruled it was a false confession. In that particular case, our investigation came up with a pretty good idea as to who did the murder. That individual was dead. We provided it to the State Patrol. However, they won't follow up an investigation when they end up with a polygraph exam when they think they have the guilty party. The other situation I had was a case where we had what's called the Johnson-Fowler murders in Lincoln. We had companion witnesses who were in another case who were polygraphed on that case and there were numerous people who kept flunking the polygraph in terms of their involvement in that homicide. Those people would be taken in and questioned for hours and they had absolutely nothing to do with it. That case ultimately ended up with people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

being arrested and currently prosecuted in federal court who had absolutely nothing to do with the case. So I think that this is a good bill. I think the law in Nebraska is that polygraphs can't be used in criminal cases, administrative cases, and I urge you to not only pass this bill to expand it further that it can't be used against anybody. Any questions? [LB143]

SENATOR ASHFORD: Thank you. Any questions of Jerry? Thank you, Jerry. [LB143]

JERRY SOUCIE: Thank you. [LB143]

SENATOR ASHFORD: Further proponent testimony? [LB143]

CHARLIE VENDITTE: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Charlie Venditte. I'm currently employed by the Douglas County Attorney's Office as an investigator. Prior to my current position, I was working for the Nebraska Attorney General's Office as an investigator and trainer for rural law enforcement across the state of Nebraska. And prior to that position, I was with the Omaha Police Department for almost 30 years. I'm here today in support of LB143 for many reasons, a couple of which are the fact that grant funding which was supplied to the state of Nebraska from 2004 to 2006 and is still ongoing were through VAWA and grants to encourage (inaudible) grant from the federal government. That grant allowed us to go across the state of Nebraska and train rural law enforcement in investigative matters and issues regarding domestic violence and sexual assault. And in the current regulations specified by the federal grant, if states across the country do not get in line with the federal grant requirements, Nebraska would be in line to lose that particular grant, which would then forbid us to...or prohibit us to continue the training that we are doing at this point in time. Second, I'm here to tell you that, as a polygraph examiner myself, we are not in the business to test victims of sexual assault or any other crime. There are many other avenues we can take to prove or disprove a person's claim or victim's claim in regards to the crime they are reporting to law enforcement. So I believe it would be good public policy as well to not do this and that's why I'm here in support of LB143. I'd be glad to answer any questions you might have. [LB143]

SENATOR ASHFORD: Any questions of Charlie? It's good to see you again. [LB143]

CHARLIE VENDITTE: Thank you. This letter I'm going to give you I was asked to bring to you by the YWCA chairman of the board and executive director. They are also in support of LB143. Thank you. [LB143]

SENATOR ASHFORD: Thanks. Further proponent testimony? [LB143]

PAM PERRY: Good afternoon. I'm Pam Perry, executive director of Nebraska Domestic... [LB143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Would you spell your last name just so we get it? [LB143]

PAM PERRY: I'm sorry, sure, P-e-r-r-y... [LB143]

SENATOR ASHFORD: Great. [LB143]

PAM PERRY: ...with the Nebraska Domestic Violence Sexual Assault Coalition. And I would like to speak on behalf of the 22 programs across the state that we serve as well as victims of sexual assault and domestic violence. I'd like to... [LB143]

SENATOR ASHFORD: Can you speak up just a...sorry. [LB143]

PAM PERRY: Sure. I wish I was... [LB143]

SENATOR ASHFORD: I don't do a very good job of it either but we're supposed to speak up so that they can hear us throughout the whole state. [LB143]

PAM PERRY: All right. I'd like to approach this bill from a couple of different standpoints and one is from the standpoint of the victim and then also from the programs and the communities who need the resources from VAWA to be able to support victims. With LB143, one of the things we are really supportive of is the fact that we will finally have a provision against polygraphing victims of sexual assault as a condition for investigation. We understand this legislation leaves the door open to use the polygraph as an investigative tool. While we're not at odds with this provision and the legislation, we certainly discourage any use of polygraph with victims of violent crime as a general practice. Obviously, victims of sexual assault have been traumatized. While the investigative process may give some victims strength and hope, it may also feed their trauma and their shame and their fear. Pursuing prosecution can be a very frightening experience and not everyone will choose to face those fears. Thankfully, law enforcement and the criminal justice system are here to provide us with safety and justice. But not every victim will feel secure enough in themselves and in the system to trust their case and their lives to so many others. If we believe the offenders often select victims who appear more vulnerable and the sense of vulnerability is compounded dramatically after victimization, then it is easy to imagine that victims who feel so vulnerable would choose to retreat rather than report. Or they may choose to provide vague information, reject investigative procedures, or not pursue prosecution after their initial report. So it's good to keep in mind that when someone asks a victim if he or she is willing to take a polygraph the question they may be asking themselves is not, will they find out I'm lying. The question and the hesitancy is more likely related to general reflections of shame and fear. Who's going to know? Will they think it was my fault? Will the offender hurt me if I tell? Will my partner hurt me or hurt someone else when he or she finds out what happened? So it seems important to acknowledge that the key

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

reason that some want to retain full use of the polygraph is to use it as a coercive tool. We should put it out on the table that the biggest issue here is we still think that many victims are lying. In those instances, use of the polygraph may be done to convince someone in the investigative process that what they're hearing, what is reported, is true and that may be the sole reason. So on behalf of victims and the coalition, I thank you for proposing LB143 and its additional protections for already vulnerable victims. And I would like to add I don't want to be redundant because it has already been stated that we really appreciate the opportunity to secure the federal funds. The programs that we serve and our partners in probation and law enforcement, etcetera, are increasingly reliant on federal dollars to be able to serve victims. So we couldn't really do it very well without this. Thank you. [LB143]

SENATOR ASHFORD: Thank you, Pam. Any questions of Pam? Senator Chambers. [LB143]

SENATOR CHAMBERS: Just one. I've been quiet, good all day. [LB143]

SENATOR ASHFORD: Yes. [LB143]

SENATOR CHAMBERS: If it weren't for the money, would this bill be before us? [LB143]

PAM PERRY: You know, I asked myself that same question. And, as a matter of fact, we had been working on, through the coalition, working on a position statement to help deal with some of these issues of the use of polygraph with victims of sexual assault and we had a draft ready. And our concern was that, well, we wanted to be able to educate and influence public policy. But our concern was the practice would not change without legislation. But I do think that having the dollars out there being tied to this really helped motivate a lot of people at the same time to make the issue a top priority. [LB143]

SENATOR CHAMBERS: And some who might have been against this idea before may now be for it because some of that funding may help what it is they want to do with it. [LB143]

PAM PERRY: Well, I think it helped us cooperate and come to a place that we're all comfortable with. I do think because of the way this legislation is written, not fully discounting the use of the polygraph, I do think everyone is comfortable with it as far as bringing some people to the table that might not otherwise. It might not, again, just have been a priority. I think it's been a concern of how it's been used, but... [LB143]

SENATOR CHAMBERS: Thank you. That's all I have. [LB143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

PAM PERRY: Yeah. [LB143]

SENATOR ASHFORD: Thanks, Pam. Further proponent testimony? How many other testifiers do we have? You're it. [LB143]

DENISE CHRISTENSEN: (Exhibit 10) Good afternoon. My name is Denise Christensen, that's D-e-n-i-s-e C-h-r-i-s-t-e-n-s-e-n. I am director of the Family Advocacy Network at Good Samaritan Hospital in Kearney. Today, however, I am here representing the Nebraska Alliance of Child Advocacy Centers in support of LB143. As many of you may know and have visited the child advocacy centers in Nebraska: the Lincoln Child Advocacy Center here, the Project Harmony in Omaha, the Northeast Child Advocacy Center in Norfolk, the Central Nebraska Child Advocacy Center in Grand Island, the Family Advocacy Center in Kearney, the soon-to-be-opened Bridge of Hope in North Platte, and Capstone in Scottsbluff. These seven centers assist law enforcement and Health and Human Services in a comprehensive, coordinated, multidisciplinary response to child abuse and child sexual assault. What does this mean? This means on any given day children as young as three are brought to these centers and asked to disclose the intimate details of a possible assault that has occurred. In 2005, more than 2,000 children were interviewed at child advocacy centers across the state. Each interview is conducted by a trained forensic interviewer and recorded for law enforcement and the prosecuting attorney for investigative purposes to determine if a crime was indeed committed. Nearly 700 of these children also receive medical evaluations. The information from these medical exams can also be used in evidence. These are several tools that are very important in the investigation and prosecution in child sexual abuse, again, a lot of facts and figures. I want you to think about having a daughter or granddaughter, niece, about 13 years old that has to come and first disclose to a parent or teacher or trusted friend that they have been sexually assaulted, then asked to provide this information in a very detailed account. And imagine how terrible it would be for that family to then have to subject that child to a polygraph. They are already subjected to a lengthy investigative process that hopefully through child advocacy centers has been made a comfort to them. We provide advocacy to them through this very difficult process and they are already in a very fragile state. The Nebraska Alliance of Child Advocacy Centers urges you to support this legislation so that small voices may be heard and believed. I've included an annual report that provides information about the child advocacy centers across the state. If you've not visited the one in your district, I encourage you to do so. The information is at the back. Thank you. [LB143]

SENATOR ASHFORD: Thanks, Janice (sic). Any questions of Janice (sic)? Senator Chambers. [LB143]

SENATOR CHAMBERS: I'm trying to see where I saw in your document the statement so that small voices may be heard. Is that on here somewhere? [LB143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

DENISE CHRISTENSEN: Right at the bottom. [LB143]

SENATOR CHAMBERS: Okay. And also to enhance Nebraska's response to child abuse. I take it that these organizations are not interested only in sexual abuse of children. [LB143]

DENISE CHRISTENSEN: Right. [LB143]

SENATOR CHAMBERS: Are they interested if the abuse may have been inflicted by a school principal on an 8-year-old little girl? [LB143]

DENISE CHRISTENSEN: Absolutely. [LB143]

SENATOR CHAMBERS: So Project Harmony is the one I would contact in Omaha about that? [LB143]

DENISE CHRISTENSEN: Yes. [LB143]

SENATOR CHAMBERS: And I see the name here. Would I find him in the phone book? [LB143]

DENISE CHRISTENSEN: They're in the back. In the last page is a directory listing all the advocacy centers in the state. We do serve every county now in Nebraska. [LB143]

SENATOR CHAMBERS: Thank you very much. [LB143]

DENISE CHRISTENSEN: You bet. [LB143]

SENATOR ASHFORD: Thank you, Senator Chambers. Thanks, Denise. Senator McDonald, do you wish to close? Thank you. Thank you all. Senator Schimek, LB81. [LB143]

SENATOR LATHROP: On LB81, Senator Schimek. [LB81]

SENATOR SCHIMEK: (Exhibit 11) Thank you, Mr. Chairman and members of Judiciary Committee. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "Historic District." I'm here to introduce LB81 which was brought to me by Virgil Horne who is with the Lincoln Public Schools. And this is a bill that does two things, and I'm going to explain the bill as it is in the green copy, and then I am going to offer an amendment to the bill which will change it. The first thing that the bill does is it creates the offense of school trespass. As introduced, this bill would define school trespass as when a person convicted of a criminal offense against a minor or a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

sexual offense against any person enters and remains on or in school grounds or when any person enters school grounds or property after he or she is asked to leave by a school official. This offense would be a Class I misdemeanor. A school official who has reasonable cause to believe that a person is committing school trespass would be able to summon law enforcement and would not be liable or would be immune from lawsuit for any action based on the school official's belief that such action is authorized by this section of law. This would allow the law enforcement officer to have probable cause and arrest the defender, whether or not the offense was committed in the presence of the law officer. The second thing LB81 does is that it requires contractors, subcontractors, vendors, or other providers of goods or services to a public, private, denominational, or parochial school to identify and prohibit employees who are...from being on school grounds while working for or in any way acting on behalf of such person. This includes driving or being in vehicles owned, leased, or contracted by such school for school purposes. These contractors would be required to develop and maintain a list of its employees and agents to determine if any persons on the list are registered sex offenders. Violation of this section is a Class IIIA misdemeanor. Since the introduction of this bill, we've heard concerns, particularly about Section 7 of the bill, specifically lines 7 and 8, which state that any person convicted of a criminal offense against a minor would be committing school trespass. We realize this is a very, very broad range of offenses and persons that would be under the scope of this section. So I would like to present an amendment to the committee that would strike lines 6-14 altogether. The amendment also changes language regarding the detainment of those in violation of this section. Realizing that this could be potentially a very dangerous situation for individuals who might be present at the time the violation occurs, the amendment strikes this language and permits persons to summon law enforcement instead of detaining the violator. This is, of course, a much safer alternative. If the committee has any questions, I'd be happy to try to answer them, but I do have someone here from Lincoln Public Schools to testify, and I'd also like to add that I have copies of a letter of support from Mike Dulaney who represents the Nebraska Council of School Administrators. [LB81]

SENATOR ASHFORD: Do you...any...? [LB81]

SENATOR SCHIMEK: I'm sorry, Mr. Chairman. Did you get that letter in these that we just passed out? [LB81]

SENATOR ASHFORD: Well, I just got...I just received the amendment. I'm not... [LB81]

SENATOR SCHIMEK: Just got the amendment. I will have to get the letter then... [LB81]

SENATOR ASHFORD: I'm not sure. We'll put it in the record... [LB81]

SENATOR SCHIMEK: Thank you. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: ...once you have it, Senator Schimek. [LB81]

SENATOR SCHIMEK: Okay, thank you. [LB81]

SENATOR ASHFORD: Do we have any questions of Senator Schimek? Senator Chambers. Do you have a question? [LB81]

SENATOR CHAMBERS: I was just going to say, Senator Schimek, any questions I have I'm going to reserve them for the people following you if you don't mind. [LB81]

SENATOR SCHIMEK: Okay. And I'd be happy to try to work with you if you still see some problems with the language. [LB81]

SENATOR CHAMBERS: Thank you. [LB81]

SENATOR ASHFORD: Senator Lathrop. [LB81]

SENATOR LATHROP: I do have just a question about... [LB81]

SENATOR SCHIMEK: Certainly. [LB81]

SENATOR LATHROP: ...paragraph 4 on page 3, about it sounds like we're creating a special opportunity for law enforcement to arrest somebody without a warrant... [LB81]

SENATOR SCHIMEK: It sounds... [LB81]

SENATOR LATHROP: ...for an offense that didn't happen in their presence. [LB81]

SENATOR SCHIMEK: It sounds like that to me, too, Senator, and I don't know if it's unusual to do that or not. [LB81]

SENATOR LATHROP: I'd say probably so. Are there people that are coming behind you that will address that? [LB81]

SENATOR SCHIMEK: Yes, there are. And again, I had some questions about the language in this bill, too, so as I said to Senator Chambers, I'm willing to work on it with you. [LB81]

SENATOR LATHROP: Is this a model bill of one kind or another? [LB81]

SENATOR SCHIMEK: No, not that I'm aware of. As I said, it was brought to me by the Lincoln Public Schools, and I introduced it as is. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: Oh, it was brought to you by Lincoln Public Schools? I thought it was by OPS when I looked at how bungled it is, but I'll keep that to myself. [LB81]

SENATOR SCHIMEK: (Laugh) Well, I'm glad we clarified that then, Senator. (Laughter) [LB81]

SENATOR ASHFORD: Well, good luck, Virgil, when you come up here. (Laughter) Thank you, Senator Schimek. [LB81]

VIRGIL HORNE: Senator Ashford and members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools, testifying in support of LB81. I should probably stop right there and ask for questions, but I will... [LB81]

SENATOR ASHFORD That seems like it might be enough testimony; I don't know. [LB81]

VIRGIL HORNE: ...(laugh)...I will tell you very quickly that I am not a lawyer. I would simply say that... [LB81]

SENATOR ASHFORD: No disclaimers are going to work either. I think (inaudible). (Laugh) [LB81]

VIRGIL HORNE: If I get (inaudible) or whatever. Basically we had a situation where we had a contractor on one of our elementary school sites who was doing some work that we had requested, and were informed of the presence of a registered sex offender, and determined at the time and were advised at the time by our legal counsel that we could actually take no steps to ask that person to be removed from that work site. And consequently we started the process of drafting this bill. We further found out that although it's been presumed for many years that a school person could ask someone to leave a school site, that there is no actual Supreme Court ruling on whether there is a bill...and, again, I'm paraphrasing what I think is correct from our legal counsel...of school trespassing. So in the process of drafting the bill, we felt that it was necessary to establish what school trespassing was, and then the other issue with the contractor addresses the issue that we have. That concludes my testimony. [LB81]

SENATOR ASHFORD: Thanks, Virgil. Yes, Senator Chambers. [LB81]

SENATOR CHAMBERS: Is your legal counsel going to be here? [LB81]

VIRGIL HORNE: No, sir, he cannot be here; I'm sorry. [LB81]

SENATOR CHAMBERS: Or chose not to be here? [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

VIRGIL HORNE: No. He cannot be here. [LB81]

SENATOR CHAMBERS: Do you know why? [LB81]

VIRGIL HORNE: He is out of town to the best of knowledge. [LB81]

SENATOR CHAMBERS: He's where? [LB81]

VIRGIL HORNE: He is out of town to the best of knowledge. [LB81]

SENATOR CHAMBERS: Do you think it was a convenient departure from the city? If you were a lobster--and you know what they do to lobsters in restaurants... [LB81]

VIRGIL HORNE: I do, sir. [LB81]

SENATOR CHAMBERS: ...and you were invited into a restaurant and you were a lobster, would you come to that restaurant? [LB81]

VIRGIL HORNE: I'm here, sir. I guess that speaks volumes. [LB81]

SENATOR CHAMBERS: No, you're not the lobster. If you were a lobster, would you come into that setting? [LB81]

VIRGIL HORNE: Well, it's my responsibility to represent myself the best that I can at this time, sir, so that's what I'll try to do. [LB81]

SENATOR CHAMBERS: In other words, you're taking the Fifth more or less, on answering that particular question. [LB81]

VIRGIL HORNE: (Inaudible). [LB81]

SENATOR CHAMBERS: Okay. The questions that I would ask I really can't expect you to answer perhaps, but you are mentioning one incident. Did that person...? Tell me again so that I will get it clear, or maybe I should ask a question. Did that person who had been a sex offender commit an act against somebody while on the school grounds? [LB81]

VIRGIL HORNE: No, sir, they did not. [LB81]

SENATOR CHAMBERS: [LB81]

SENATOR CHAMBERS: The person was simply there. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: And that is going to be converted into what...what is the penalty? A Class I misdemeanor or a felony? A misdemeanor. [LB81]

VIRGIL HORNE: A misdemeanor. [LB81]

SENATOR ASHFORD: Misdemeanor, it says. III, Class III misdemeanor. [LB81]

SENATOR CHAMBERS: Simply by being on the grounds. [LB81]

VIRGIL HORNE: Well, that would be for the contractor, sir, as I understand it, and not the sex offender. There would be no offense to the sex offender. We're not trying to judge that person. What we're asking for is protection from the contractors to have those people on the school grounds. [LB81]

SENATOR CHAMBERS: Well, if the sex offender...? Is there any law against a contractor or anybody else hiring a sex offender? [LB81]

VIRGIL HORNE: No, sir, and we're not asking that in this bill. [LB81]

SENATOR CHAMBERS: [LB81]

SENATOR CHAMBERS: Just... [LB81]

VIRGIL HORNE: Excuse me. [LB81]

SENATOR CHAMBERS: ...a step at a time. [LB81]

VIRGIL HORNE: Excuse me. [LB81]

SENATOR CHAMBERS: Because you wanted to end your testimony at the point, so I don't want to make you answer more than what I'm going to ask you. [LB81]

VIRGIL HORNE: Okay. All right. [LB81]

SENATOR CHAMBERS: What triggered this bill...? And it was drafted this way by the lawyer for O... [LB81]

VIRGIL HORNE: LPS. [LB81]

SENATOR CHAMBERS: ...LPS, was the presence of a sex offender as an employee of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

a contractor. [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: Okay. Now the contractor may legally hire the sex offender, and the sex offender may legally work for the contractor. [LB81]

VIRGIL HORNE: Yes, sir [LB81]

SENATOR CHAMBERS: The sex offender did not commit a crime or anything inappropriate while on the grounds of the school. [LB81]

VIRGIL HORNE: That is correct to the best of my knowledge. [LB81]

SENATOR CHAMBERS: Now, the sex offender is the focal point, but this is not aimed at the sex offender but rather a contractor who has not violated the law either. [LB81]

VIRGIL HORNE: That is correct. [LB81]

SENATOR CHAMBERS: And that's what the lawyer for LPS determined ought to be by bringing this law. [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: Do you think it ought to be enacted into law, or you're not authorized to express a personal opinion? [LB81]

VIRGIL HORNE: No, I am. I am authorized to express the fact that, yes, we do, because the parents of the students who went to this school were very concerned about this fact. So that...I mean, we didn't do this because we enjoy coming down here. [LB81]

SENATOR CHAMBERS: I can understand the fear, so don't misunderstand that. But what has that got to do with anything when we're being asked to create a crime where no crime is involved by anybody? Should I be asked to make criminal any conduct that somebody else fears? [LB81]

VIRGIL HORNE: I supposed you have to ask yourself that everyday, Senator. I really can't address that because... [LB81]

SENATOR CHAMBERS: I'm asking you. [LB81]

VIRGIL HORNE: In my opinion, if this would prevent something from happening and with all the other kind of preventative things that we have to go through with background

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

checks for all of our employees and for volunteers and anybody that... [LB81]

SENATOR CHAMBERS: That's still irrelevant. [LB81]

VIRGIL HORNE: Well, it is to you, sir, but to the parents of the students and to the staff of the school, it is not irrelevant. [LB81]

SENATOR CHAMBERS: So if the parents at an all-white school were afraid to have black children there, and a black child was enrolled, whoever enrolled that black child ought to be guilty of a crime because the white parents were put in fear? [LB81]

VIRGIL HORNE: No, sir. But I think there's a tremendous...in my opinion, there is a tremendous difference between someone who has displayed an act that is a criminal act than there is from a child who comes to school who happens to be of a different color and scare people. [LB81]

SENATOR CHAMBERS: The person did not commit an act on the school grounds. No crime is involved in this, in anything. You want to create a crime where no crime currently exists. Isn't that right? [LB81]

SENATOR CHAMBERS: My interpretation would be that we want to create a crime when an individual has previously committed a crime and is put in the position where there could potentially be an additional crime committed. [LB81]

SENATOR CHAMBERS: So you want to punish somebody for what they might do in the future rather than anything they actually do? [LB81]

VIRGIL HORNE: No, sir, it would not be that person, because the bill, as I understand it, addresses the contractor and not the sex offender. [LB81]

SENATOR CHAMBERS: But we keep coming back to the underlying rationale. That's why I wish your lawyer was here and that's why I think the lawyer didn't come. He should not have sent anybody to carry this piece of trash. That's what I see it as being. It is ridiculous. It is preposterous. And any legislature, including this one, that would create a crime under these circumstances ought to all be thrown out of the office, except that we cannot be thrown out of office for being stupid, just like superintendents won't be fired for being stupid and lawyers will not be punished for being stupid. In fact, lawyers and judges are the only ones under the jurisprudence of America where ignorance of the law is an excuse. If a lawyer blunders and it's an area where the courts say, well, a guy with his or her training wouldn't be expected to know this so he or she won't be held accountable, there can be some esoteric part of the law that nobody even knows exists but they'll tell me, whom am not trained in the law and may not even be able to read, I'm sorry, Chambers, ignorance of the law is no excuse. You know why I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

so upset about this? It demonstrates an attitude of fear and paranoia where I don't think it is justified, when it results in criminalizing conduct which is harmful to nobody. The contractor has not harmed anybody by giving a job to a person. The person on the premises has not committed a crime, and from all we can gather from what you told us, did his or her job well enough so that the contractor wouldn't fire the person for not having done the job. So I don't see anything that would justify this bill becoming law. I'm not doing away with the fear of parents because fear is used by the schools and everybody else who wants to make use of parents and others as props. Put them in fear, tell them to run to the Legislature and show their fear, and the Legislature, on the basis of their fear, will enact a law. There should be counselors. There should be people from law enforcement with some understanding other than in how to spread fear, to show those fearful parents that everything they dislike cannot be converted into a law. And that's why I wish your lawyer was here. And I'm saying this because it will be recorded; it will be transcribed; and I'm going to get a copy of it and I'm going to send it to that lawyer and to the superintendent of LPS. That's all I have, Mr. President. [LB81]

SENATOR ASHFORD: Yes, Senator McGill. [LB81]

SENATOR MCGILL: I have a question. I'm just wondering about what the current laws are regarding this as far as background checks are concerned and who is allowed on the premises. Can you just fill me in a little bit on what it currently is? [LB81]

VIRGIL HORNE: If they are there for purposes of the school, right now anyone who is employed by the school district, there has to be a background check. If they're there on the premises by anyone else, right now we do not include volunteers, but that's being discussed. Otherwise, if the person comes in as an employee of another subgroup, there is no background check whatsoever. [LB81]

SENATOR MCGILL: And if there are one of the groups that are checked, would these folks, these sex offenders that are targeted, be allowed to be on the premises then? [LB81]

HORNE: No. That's what we're asking for in the bill,... [LB81]

SENATOR MCGILL: Okay. [LB81]

VIRGIL HORNE: ...is that the people who hire...the contractors who hire people can hire them, they can work for the person. We just simply ask that they not be allowed to place a person who has a sex offense on the school grounds to do the work. [LB81]

SENATOR ASHFORD: Let me get Senator Pedersen. I'm sorry, Senator McGill, have you completed? [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR MCGILL: Yeah, I'm done for now. [LB81]

SENATOR ASHFORD: Senator Pedersen. [LB81]

SENATOR PEDERSEN: Thank you, Senator Ashford. Mr. Horne, does not the school rent their property out from time to time to different churches and things like that to use that property? [LB81]

VIRGIL HORNE: Yes, sir, we do. [LB81]

SENATOR PEDERSEN: This bill would say if they...we should check everybody that's coming to church if they're using the school for church, to see if any of them are sex offenders, wouldn't it? [LB81]

VIRGIL HORNE: No, sir, I don't think so. [LB81]

SENATOR PEDERSEN: It says they can't be on the property. [LB81]

VIRGIL HORNE: But it's a contractor. We go through a bidding process and it's a selection process of the contractor who asks to do the work for us. [LB81]

SENATOR PEDERSEN: Why doesn't...was there any consideration given to put a clause in the contract with the contractor, saying you handle it; we don't want sex offenders; please don't bring them out here. Part of the contract? [LB81]

VIRGIL HORNE: You know, I truthfully cannot respond to that. I don't know. [LB81]

SENATOR PEDERSEN: And my understanding of the law is, the sex offenders themselves are already governed under a law that says they're not supposed to come to a school where there are children. Isn't that on their back already, an the individual who is the offender? [LB81]

VIRGIL HORNE: From our experience, that would not be the case because the person who on the school site, working. [LB81]

SENATOR PEDERSEN: Thank you. [LB81]

SENATOR ASHFORD: Thank you, Senator Pedersen. Senator Chambers. [LB81]

SENATOR CHAMBERS: Mr. Horne, have you looked at this amendment? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: If I'm reading the amendment correctly, and correct me if I'm wrong, it strikes everything in lines 6-14, then there's nothing in this bill left except that you create the offense of trespass. And if any school person makes a reasonable request that that person leave, and the person doesn't leave, that person is guilty of this crime. But there's no reference to anything about a sexual offense or anything else, if I'm reading it correctly. Where in the remainder of the bill does it say that we're talking about a sex offender? And maybe it's still in here and I'm missing it. [LB81]

HORNE: That would be on page 3, line 20, Senator. [LB81]

SENATOR ASHFORD: Twenty what? I'm sorry, Virgil. [LB81]

VIRGIL HORNE: Pardon? [LB81]

SENATOR ASHFORD: Line 20? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: Okay. [LB81]

VIRGIL HORNE: There are separate sections totally, Senator, and the first part simply establishes that there is such a crime as trespassing, and that is a Class I misdemeanor. [LB81]

SENATOR CHAMBERS: Okay. Now, let's get back to this. Where then does it say that the contractor knows that this individual is...has to be registered under the sex offender... [LB81]

VIRGIL HORNE: Part of the bill would require the contractor to check their employees. [LB81]

SENATOR CHAMBERS: So now before a person can get a contract with LPS, he or she must run background checks on all of his or her employees. [LB81]

VIRGIL HORNE: Just as we do; yes, sir. [LB81]

SENATOR CHAMBERS: Do you hire a police officer as a security guard? [LB81]

VIRGIL HORNE: We hire them, yes, for athletic events. [LB81]

SENATOR CHAMBERS: Do you require... [LB81]

VIRGIL HORNE: We have our own individuals for building security. But there are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

on-duty officers in our schools. [LB81]

SENATOR CHAMBERS: Do you know that every officer has undergone a background check to see whether or not he has committed an offense like this? Or do you presume that since he or she is a police officer, he or she would not fit this category? [LB81]

VIRGIL HORNE: The presumption is made is that the Lincoln Police Department does a background check, sir. [LB81]

SENATOR CHAMBERS: But that presumption is not made about any other contractor, person, or company that would have contract with LPS? [LB81]

VIRGIL HORNE: Based on the way this bill was written, we would probably have to do that; yes, sir. [LB81]

SENATOR CHAMBERS: And you're prepared to require the police department to certify that they run a background check on every officer? [LB81]

VIRGIL HORNE: This says every contractor and subcontractor, so, yes, sir, we would. [LB81]

SENATOR CHAMBERS: Was that the intention of your lawyer? [LB81]

VIRGIL HORNE: Not originally, but as the bill was drafted, that's what would occur. [LB81]

SENATOR CHAMBERS: Are nurses employed at your school? [LB81]

VIRGIL HORNE: They are, sir. [LB81]

SENATOR CHAMBERS: Do they...are they there as private contractors or do they work for some other agency? [LB81]

VIRGIL HORNE: No. They are employees of the Lincoln Public Schools. [LB81]

SENATOR CHAMBERS: They're employees of Lincoln Public Schools? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: And you conduct a background check on all of them? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: So every employee of Lincoln Public Schools has been subjected to a background check. [LB81]

VIRGIL HORNE: Starting three years ago; yes, sir. [LB81]

SENATOR CHAMBERS: How about those who were currently employed at that time? Were they subjected? [LB81]

VIRGIL HORNE: No, sir, they were not. [LB81]

SENATOR CHAMBERS: [LB81]

SENATOR CHAMBERS: So they could be sex offenders? [LB81]

VIRGIL HORNE: That's absolutely correct. [LB81]

SENATOR CHAMBERS: Was it because of the teachers' union that you chose not to require them to be checked? [LB81]

VIRGIL HORNE: No. It was primarily...we couldn't get it done...and I'm guessing here, I do not have the fact on this, but I'm guessing the financial would have slowed us down quite a bit. [LB81]

SENATOR CHAMBERS: So your employees are not going to be subjected to this test, this check, that you're going to place on everybody else. Do you think that... [LB81]

VIRGIL HORNE: No, sir, that's not...oh, excuse me. [LB81]

SENATOR CHAMBERS: No, that's...go ahead what you might were going to answer. [LB81]

VIRGIL HORNE: Well, our employees are. We have background for all employees of the Lincoln Public Schools for the last three...to the best of my knowledge, three years. [LB81]

SENATOR CHAMBERS: No, I'm talking about those who were there prior to that. [LB81]

VIRGIL HORNE: Anyone...so that we can have a point of reference. If I say three years, that means 2004. [LB81]

SENATOR CHAMBERS: Okay. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

VIRGIL HORNE: So those employed prior to 2004 who were nonteachers, to my knowledge were not given a background check. I can't tell you how far back the teacher background checks go, but that legislation was passed on the fingerprinting...I'm guessing in the neighborhood, because it happened since I started lobbying, which is around 1990, so teachers have background checks since 1990. It's not been that long since we've done all employees, but I can't tell you when. [LB81]

SENATOR CHAMBERS: But whenever that took effect, it did not include any teachers who were working at that time, or are you telling me that it did reach back... [LB81]

VIRGIL HORNE: It did not. It did not. [LB81]

SENATOR CHAMBERS: It did not. So there could be sex offenders working as teachers right now. [LB81]

VIRGIL HORNE: Absolutely; absolutely. [LB81]

SENATOR CHAMBERS: And you're not worried about that enough to go ahead and check, and the mere cost of it is what makes you allow these children to be at risk? Is that what I'm going told? [LB81]

VIRGIL HORNE: You know, that's what I just said and I probably wish I hadn't of said it that way, but. [LB81]

SENATOR CHAMBERS: But you're telling the truth and I appreciate that. [LB81]

VIRGIL HORNE: Yes, sir. That's (inaudible). [LB81]

SENATOR CHAMBERS: I see this, to quote Elmer Fudd, as being very "skwoowey," and let me tell why, and I'm taking it slowly so I can let all this sink in. [LB81]

VIRGIL HORNE: I appreciate that. [LB81]

SENATOR CHAMBERS: If there genuinely is all this concern about these potential sex offenders, but the concern starts at a certain date by the calendar and anybody who happened to be there prior to that is presumed not to be a sex offender, then the same presumption ought to exist for everybody after that date. You have not said, and I don't think anybody else could say, that there was a higher level of morality among all the people in America prior to that date, so the presumption could be made that everybody who came to work for OPS prior to that date is of such high moral character and integrity that they couldn't have been a sex offender. That's not the theory. You said it's money. I think it's the teachers' union. Let's say that no contractor is willing to comply with this. Where would you get people to do the work that OPS, LPS wants done?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

[LB81]

VIRGIL HORNE: I don't really know. [LB81]

SENATOR CHAMBERS: Do you think it's reasonable to ask somebody who may be coming to LPS to repair three broken windows...? Do you have people who work for LPS who repair broken windows? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: Okay. If the wind came and blew out 20 windowpanes on the side of a high school, your employees would be able to replace all those windowpanes expeditiously? [LB81]

VIRGIL HORNE: Yes, sir. [LB81]

SENATOR CHAMBERS: Okay, now if the furnace went out, the heating system, do you have employees who will fix that? [LB81]

VIRGIL HORNE: To a degree. They can't replace it but they can fix a lot of it; yes, sir. [LB81]

SENATOR CHAMBERS: And some of these people may not have had to undergo a background check since they're not teachers, is that true? [LB81]

VIRGIL HORNE: The age of some of our employees in that department, yes, that's true. [LB81]

SENATOR CHAMBERS: so you say that the ones you hire to do this kind of, I might say flunky work, not to demean anybody, they don't have to undergo a background check if they work for OPS...LPS. But if they're doing flunky work for a contractor, they have to. [LB81]

VIRGIL HORNE: Well, that is not currently true. Anybody who works for LPS has to have a background check now. [LB81]

SENATOR CHAMBERS: Okay. But you have people in addition to teachers... [LB81]

VIRGIL HORNE: Yes, sir. Yes, sir. [LB81]

SENATOR CHAMBERS: ...who didn't have a background check. [LB81]

VIRGIL HORNE: That's correct. That is correct. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: In view of this discussion, why will not OPS...LPS go back and require everybody to have a background check, since LPS wants to cut new ground and reach out and touch people who don't work for LPS and they're not interested in the sex offender? They're interested in the one who hired the sex offender. Does LPS feel that sex offenders should be allowed to work? [LB81]

VIRGIL HORNE: Absolutely not. [LB81]

SENATOR CHAMBERS: If the contractor notifies LPS that there is a sex offender working, may that sex offender then work on LPS's premises, since notification had been given? [LB81]

VIRGIL HORNE: Under the law, they can now. I don't know... [LB81]

SENATOR CHAMBERS: No, I meant with this law. [LB81]

VIRGIL HORNE: No, under...as I understand the law as it stands today, the contractor could come in and say I have a sex offender working for me; I intend to put that person on a project in one of your schools. And to my knowledge of the law, nothing could be done about that. [LB81]

SENATOR CHAMBERS: That's what I...when I say the law, I should say with what we are... [LB81]

VIRGIL HORNE: With this bill. [LB81]

SENATOR CHAMBERS: ...being offered here today. [LB81]

VIRGIL HORNE: Yes, sir, that's correct. [LB81]

SENATOR CHAMBERS: That would indicate if a contractor does a lot of work with schools, that sex offenders as a class could not get a job with one of those contractors and work on any of the school projects because it's felt that sex offenders ought not have the right to work like everybody else. That's what we're saying with this law, isn't it? And you're going to put the screws to the sex offender by saying, no, we're creating the crime for the contractor, and the contractor is expected to do the dirty work because LPS will not simply say sex offenders are unfit to work, so we're going to get the ones who would hire them and make them make that judgment and deny employment to these people. Is that what is happening here? Not the intent; because that seems to me what's happening. [LB81]

VIRGIL HORNE: That's not our intent; no. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: But that seems to me what's happening. If that's not what's happening, tell me what is that's different from what I said. [LB81]

VIRGIL HORNE: The people who we work for are the citizens of the school district. They're the ones who pay the bonds that build the schools and allow us to do the contracting. When the people who, students and other people in the community who are basically, through property taxes, paying for those facilities, get upset because they think that their child is placed in fear. Now, whether that's a fear that's grounded in science or not, but in our opinion it is there because it has been expressed to us. And so we try to respond to that body. I mean, there are numerous things that parents contact schools about. This is one of the things that they have contacted us about, and saw it as a real threat to their child because an unrelated situation took place in Lincoln within the last year that created a major concern. [LB81]

SENATOR CHAMBERS: I thought that the purpose of education is to teach tolerance, understanding, and that in some cases there is nothing to fear but fear itself. And when an entire classification of people who haven't done anything...we're not talking about those who commit offense on the school grounds...are to be the subject of unreasoning, irrational fear, and rather than serve the function of an education system, those teachers and educators are going to knuckle under to the fear and not convert that into a learning experience and show the value of education. I see no value whatsoever for education if it cannot teach people not to fear that which need not be feared, when that fear leads to unfair actions being taken against other people. And I see harm being done to people who don't deserve to be harmed. And I'm not expressing concern for the contractor. I'm expressing concern for the people that the schools are too gutless to admit that they're trying to bar and ban. Why don't they just come out and say, we don't want anybody who fits this category of sex offender on the school grounds, working? But that's not what this is saying and that's why I kept going over and over and having you tell me we're not going after the sex offenders, we're going after the contractor. Yet the contractor is not the one they are concerned about. The contractor isn't the one that the parents fear. They fear that employee. But that's all that I will have now. That's not to say that this volcano doesn't have a mass of lava waiting to erupt, but I'm not going to let it all erupt on you because there are going to be others of your ilk following you. [LB81]

VIRGIL HORNE: Thank you, sir. [LB81]

SENATOR ASHFORD: Any other questions? Thanks, Virgil. How many testifiers do we have on this bill? Just John and then one more? Oh, okay. And one opposition. All right. Get right at it, John. [LB81]

JOHN BONAIUTO: Senator Ashford, members of the Legislature, John Bonaiuto,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

J-o-h-n B-o-n-a-i-u-t-o, executive director of the School Board Association. Although I am not a legal counsel, I have my draft of this bill marked up pretty good before I walked into the committee, and the amendments have at least helped by taking some sections out that I felt uncomfortable with. And I shared the same concern that Senator Lathrop did on Section 4. The only section that my members, school board members, were really interested in me visiting with you about was Section 3 and having some idea of who is in the school building and getting...if a contractor knows that they have a sex offender working for them, and I think that's an issue. If board members had a preference, their preference would be not to have that person on the school site. But, again, if they're working a building where there are no children present, I don't know how limiting you would want to make that or could make that, but it's just a matter of knowing and being able to make a determination. But that was the only area that my members had discussed having some sense of when they hire a contractor or subcontractors, who is going to be working at the site. With that, I'm going to conclude my testimony. [LB81]

SENATOR ASHFORD: Senator McDonald. [LB81]

SENATOR McDONALD: Would a contractor know if they have hired a sex offender? Does the sex offender have to tell the employer that they're a sex offender? [LB81]

JOHN BONAIUTO: No, I do not believe that that would be a requirement. [LB81]

SENATOR McDONALD: Even if they're a registered sex offender? [LB81]

JOHN BONAIUTO: And I don't know if they have to or not, and that was one of the concerns that I know that the school board members that I had visited with in our legislation committee had discussed is when they bring in contractors or subcontractors to the site, they don't know these people and so they have no idea where they're from, what their background is. And so this is, I think, a matter of assurance just to give them some comfort that someone has taken a look at these folks. [LB81]

SENATOR ASHFORD: Thank you, Senator McDonald. Senator Chambers. [LB81]

SENATOR CHAMBERS: What is the name of your organization? [LB81]

JOHN BONAIUTO: School Boards. [LB81]

SENATOR CHAMBERS: Does it include private schools? [LB81]

JOHN BONAIUTO: No, it does not. [LB81]

SENATOR CHAMBERS: Does it include denominational or parochial schools? [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

JOHN BONAIUTO: No, just public schools. [LB81]

SENATOR CHAMBERS: Why are you speaking for them? [LB81]

JOHN BONAIUTO: I am not. I'm just speaking for... [LB81]

SENATOR CHAMBERS: They may not be as narrow minded and intolerant as LPS, yet your lawyer put them in this bill. Why? [LB81]

JOHN BONAIUTO: This was not our bill to have drafted or our legal counsel, but this is an issue that school board members have discussed in our organization, that they are concerned who comes into their building. [LB81]

SENATOR CHAMBERS: Did they discuss it at the school board meetings? [LB81]

JOHN BONAIUTO: Yes. [LB81]

SENATOR CHAMBERS: Do they wear bedsheets and pillow cases when they meet? [LB81]

JOHN BONAIUTO: No, not...no, they do... [LB81]

SENATOR CHAMBERS: And if they do, do they at least have to show their faces? [LB81]

JOHN BONAIUTO: They were not...the discussions that I listened to said they were not trying to be unreasonable or intolerant. They were concerned, not knowing when they bring people into the building, if they should be worried. And they want to make sure that they're doing everything that they can do to protect children that they're entrusted with. [LB81]

SENATOR CHAMBERS: When you were marking up your copy, did you strike out these...did you strike out public, private, or parochial? Did you strike that, those words? [LB81]

JOHN BONAIUTO: I made lines through that entire section. [LB81]

SENATOR CHAMBERS: Okay. [LB81]

JOHN BONAIUTO: And I should have made it clear that I was just speaking for public school board members and we do not have any members of private, denominational, or parochial schools. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: And, you know, Mr. Bonaiuto, I make white people very nervous because they have negative attitudes toward black people and no black person should dare speak as I speak. But I'm going to call it to their attention how offensive things are that they do, and they think it's all right, and they say, well, I didn't intend to hurt you, but they hurt people all the time. And somebody needs to call it to their attention so when this kind of trash comes, it's going to be treated like trash by me. And that's what I see this as being. And now, that having been said, I'm going to ask you, when your board members were discussing this, were you present? [LB81]

JOHN BONAIUTO: Yes, I was. [LB81]

SENATOR CHAMBERS: And what did they say they feared? The mere presence of the person or that the person was likely to do something to harm their children? [LB81]

JOHN BONAIUTO: That they did not know whether or not... [LB81]

SENATOR CHAMBERS: So it's fear based on pure ignorance. [LB81]

JOHN BONAIUTO: No, I think it's just...it was fear based on not knowing. [LB81]

SENATOR CHAMBERS: That's ignorance when you don't know. Isn't that what the definition of ignorance: lack of knowledge? So their fear is based on ignorance. We've got a bunch of ignorant people, right? And I thought the purpose of education was to cure ignorance. But let me take it a bit further. This person could not do any work, no matter what or where, on the school premises, and in some cases in these vehicles, isn't that true? [LB81]

JOHN BONAIUTO: The way this is written, that would be true. [LB81]

SENATOR CHAMBERS: So the person could not be putting stripes on the football field in broad daylight in front of everybody in the school? Could he or she? [LB81]

JOHN BONAIUTO: Again, the way that this is written, that would be true. [LB81]

SENATOR CHAMBERS: And these school board members of yours thought that, while putting those stripes out there, he or she might break away and go rape somebody's child or drag somebody's child down there and rape the child? [LB81]

JOHN BONAIUTO: No. And I...the discussions we were having, the school board members would like to know who is working for contractors, if anyone is looking at the subcontractors and employees. And they didn't talk about whether or not they would allow them to work. They would just like to know if there is the potential for a problem.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

[LB81]

SENATOR CHAMBERS: But this creates a crime if that... [LB81]

JOHN BONAIUTO: Yes. [LB81]

SENATOR CHAMBERS: Okay. [LB81]

JOHN BONAIUTO: And this, again, was a bill that we did not have drafted but it's a discussion that I know my members had, and so I was interested in that particular section. [LB81]

SENATOR CHAMBERS: So why are you...why did they send you here to support it? [LB81]

JOHN BONAIUTO: If there is anything that is redeemable in this green copy, the part that deals with contractors, subcontractors, and vendors, just having the knowledge that someone has checked the people that's working for them and they are sending people to the site that they know. [LB81]

SENATOR CHAMBERS: They don't specify that this person cannot be alone with a child, do they? [LB81]

JOHN BONAIUTO: No. [LB81]

SENATOR CHAMBERS: They don't say, in a set of circumstances where it is likely the person will reoffend, whatever the offense had been. I'm putting this in the record because there is too much that goes without being challenged, not only in Nebraska but this society. That's why I say, when I came to this Legislature I let the people know in my district that I'm not here to reflect ignorance. And they can be as ignorant as a post, but I'm not going to reflect it. And I think they sent you here to reflect ignorance, but you did give a disclaimer to separate yourself from those who sent you here. But whenever any of these kind of bills come, they can expect this from me, and my colleagues can expect to be here a long time. That's what our job is. And they can leave while I'm doing this for all I care, but it's going to be in the record. And I'm going to keep doing it and doing it until I can sensitize these people. They're all grown; they all presumably have got a good white Christian education. They're all democratic freedom-loving Americans. They believe that all people are created equal. God gave them inalienable rights. But still I look at what their laws say, and that's what tells me what they are. I am not opposed to reasonable legislation, but when it comes to these sex offenders, almost everything that has been brought to us has been, in my opinion, unreasonable. There has not always been this terror of children...I meant, of sex offenders. And with all the abuse of children by the Catholic church, and a judge, a federal judge, allowed a lawsuit

to go all the way to the Vatican because they ratified the wrongdoing of these priests who were sodomizing and otherwise sexually molesting these children. But who condemns the Catholic church? La Cosa Nostra, the Mafia, don't tolerate child sexual abuse. So if the church could at least get the moral standards of La Cosa Nostra and the Mafia when it came to children, we would be somewhere up the line. But when we talk about sex abuse, nobody will point to the largest institutionalized sex abuse going on even here. You read about dioceses having to set money aside to pay damages for all of the children who have been abused with the knowledge of bishops, archbishops. And it has gone all the way to the Vatican, and Ratzinger knew about it before he became the 16th. So when you have wrongful conduct and it's ratified by the higher-ups, that conduct becomes the conduct of the organization. That's how corporations are made liable for the actions of their employees. So while we're talking about all these sex offenders here, I never hear anybody except me talk about the Catholic church and its approved sex abuse of children, because people are afraid. Well, until they start putting the spotlight on the Catholic church, then we're going to have to say that these sex offenders ought to be given the breaks that the priests are given. Cardinal Bernard Law, after presiding over all of that sex abuse and knew about it in Boston, was removed and taken to Rome and given a position over the second highest or largest church in Rome. That's how they punished him. And he never could have gotten that position had he not been involved in the sex abuse cover-ups. So that's the way to make it in that church. Now I'm going to come back to this bill. How in the world, with society turning a blind eye to that and not even wanting to discuss it, there are people in this room who wish I wouldn't say what I'm saying now, and they're going to spend all this time saying that because somebody was willing to practice what Jesus talked about, giving somebody another chance. How many times should I forgive my brother? Seven times seventy. Now, that's what Jesus said. You all believe in him; I don't. And I don't believe in him because those who say they do, don't practice what he says. So if they're acquainted with him and they don't believe what he says, why should I? So here's this guy, saying I'm going to give this man or this woman a chance to make an honest living, but knowing that this person has had problems I'm not going to put that person in a situation that would create temptation or an opportunity, and we'll come to an understanding. So up until this thing would become law, that person can work on any job that his or her boss undertakes. But with this law, not just LPS, but OPS, any other school, public or private, where they're not as intolerant and fear-ridden as these ignorant people in Lincoln, those people could not work. I find that so repugnant, so reprehensible that I have to say what I'm saying. If it were left to you, would you want to say that these people should be banned from working these jobs, and if they're allowed to work there, then the man who hired them or the woman who hired them is guilty of a crime? Becomes a criminal for giving somebody a job in America? Is that your philosophy too? [LB81]

JOHN BONAIUTO: No, it is not. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS How do you spell your last name? B-o-n-i-t-o or B-e-n-i-t-o? [LB81]

JOHN BONAIUTO: Well, it's B-o-n-a-i-u-t-o. [LB81]

SENATOR CHAMBERS Did it used to be B-e-n? What am I getting at? [LB81]

JOHN BONAIUTO: The fish. [LB81]

SENATOR CHAMBERS And some people may not know the fish. We'll leave that between us. (Laugh) That's all I have. Thank you. [LB81]

JOHN BONAIUTO: Thank you, Senator. [LB81]

SENATOR ASHFORD: Thank you, John. Senator McDonald. [LB81]

SENATOR McDONALD: In the situation that we're talking about that a contractor has a sex offender on the payroll, comes to a school and works. Children are on the property, of course. Strikes up some sort of a conversation, and that sex offender has now left his job on the way home or whatever, and strikes up that same conversation with that child because that child recognizes him from being on school property. And obviously there's a problem there. Can the school be responsible for what happens? Could they be involved in a lawsuit by allowing that to happen: him being a sexual offender be employed and working on the school? Because that relationship became involved in that? Could the school be brought into anything like that? [LB81]

JOHN BONAIUTO: I am guessing that the school could. I mean, it would...when something of that nature occurs and people are angry, they will probably strike out at anybody and everybody they can, and the school would be one of the people named or the entity named in some kind of a suit. But, again, that goes back to the school boards and the schools wanting to just know who's in their buildings. Whether your not you prevent the person from working is another issue, but to have knowledge of who's coming into your school and being able to understand is important. And so that...this may go too far or go a direction that we would not like to see it go, but the issue is still there: having a concern about who's in the schools and not knowing their background. [LB81]

SENATOR ASHFORD: Yes, sir. [LB81]

SENATOR CHAMBERS: Mr. Bonaiuto, this bill says that the contractors shall prohibit any person from, who works for him or her, from being on the school grounds. Why doesn't the school prohibit it? [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

JOHN BONAIUTO: That should be the school's decision if...and, again, that's why I say that this... [LB81]

SENATOR CHAMBERS: They want to make somebody else do their dirty work, don't they? It really is the sex offender that they're after; not the contractor. But by putting the screws to the contractor, they want to make the contractor do the dirty work. Isn't that true when we get right down to it? [LB81]

JOHN BONAIUTO: It's true. [LB81]

SENATOR CHAMBERS: Okay. [LB81]

JOHN BONAIUTO: Yes, sir. [LB81]

SENATOR ASHFORD: Thanks, John. [LB81]

JOHN BONAIUTO: Thank you. [LB81]

SENATOR ASHFORD: Any others? Thank you, John. Opponents? Okay. [LB81]

AMY MILLER: (Exhibit 12) Good afternoon. My name is Amy Miller. My last name is spelled M-i-l-l-e-r, and I'm legal director for ACLU-Nebraska. We're pleased about the proposed amendment to strike some of the very broad language and some of my testimony, of course, is about the initial bill which you can disregard. But we still have a concern of LB81 in its entirety for some of the reasons that have been brought out in the prior testimony. Again, as I mentioned in our testimony on LB138, there is a myth that sex offenders are the stranger lurking in the bushes, the man who strikes up a friendly conversation while working at a school. That's just not the truth. The truth is 90 percent of the children who are sexually molested in this country know their attacker very well. Let me put that more baldly: It is usually a parent, an uncle, or a sibling who is raping the child. Trying to bar people who have been through the criminal justice system from finding even the most basic, flunky-type work, is not going to improve safety for the public as a whole. Again, there are studies showing that when you have restrictions of this sort on sex offenders, if they are unable to get a job, if they are unable to find housing, they're more likely to go back underground and not continue to comply with both treatment and supervision requirements for sex offenders. This bill, as the testimony has been talking about, really is focused on contractors. But I want to draw your attention to the fact that it goes broader than that. It also talks about vendors. This means literally the pizza delivery guy would not be able to bring a pizza when school is not in session, when the teachers have simply asked for a training session. Anyone who is brought onto school grounds then is required to have a background check. Senator McDonald asked earlier of one of the testifiers whether or not contractors are in a position or employers for people who do vending, if they are in a position to do these

type of screening? And the answer is, no, not without great cost and shifting that cost to the employer. People who are on the sex offender registry who are the highest level to offend, the level 3 offenders, of course can be seen by the general public, but neither you or I can go and check and see who is listed as a level 2 or a level 1 offender. This would require that anyone who is interested in offering employment to someone would go through a thorough background check, which is extremely expensive, and not usually available for the type of employment that we're talking about. We are concerned that this just continues to give that false sense of security that sex offenders, if we continue to bar them from certain places, if we continue to limit where they can live, if we limit the types of jobs they can have, that we will be protecting children, when the reality is that this is only going to decrease public safety. Even with the amendment, we don't feel that LB81 is appropriate. And finally we would point out that we believe that the existing state statutes about criminal trespass would address the situation if a problem arose. The existing criminal statutes, which are in footnote 1, Section 28-520 prohibits someone from entering or staying in a building. If the contractor is in the building and is doing something inappropriate and if a vendor is doing something inappropriate, he or she can be ordered to leave. If you find someone lurking in a building, they can be ordered to leave. Section 521 goes broader than that and talks about anyone who enters a place, including then not just a building but if someone goes on to the football grounds, if someone goes into a more open area or is lurking in the bushes of the school, schools already have the ability to, quote, actually communicate to the actor or post in a manner prescribed by law that the intruder is not allowed to come into the building. The existing law takes care of these issues. And I would add on a personal note that I am in and out of public schools all across the state as an educator, but I'm also a mentor in the Lincoln Public Schools. And they already have strong safety issues set up. Most schools I'm in, ranging from Scottsbluff to Hastings to Norfolk and Papillion, have locked doors. You are only able to enter one door of the building and you have to sign in. The schools already have a good idea of who is present in their buildings as it is. If they have concerns about these issues, again I think that Senator Chambers' comments are correct. This is a way to demonize sex offenders and placate the constituent of parents who publicly need to be educated that they need to be looking more closely at home at the people who may be victimizing their children, rather than imagining that strangers are the problem. [LB81]

SENATOR ASHFORD: Thank you, Amy. Any questions? Thank you. I'm sorry. Senator Schimek. [LB81]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Amy, I want to just go into this a little bit, your footnote, because I'm not exactly sure what it means. "First degree criminal trespass, makes it illegal for a person to enter or secretly remain in any building with the knowledge that he or she is not licensed or privileged to do so." So let's take your illustration of the pizza vendor who may be a sex offender but nobody knows that he or she is. That person would be allowed in the building, regardless, right? [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

AMY MILLER: That person would be allowed in the building, but at some point, if the pizza guy decided I think I'll linger down by the kindergarten room and try to talk to someone, all that has to happen is at this point he is no longer licensed or privileged to remain in the building. School officials can appropriately tell that person to leave. [LB81]

SENATOR SCHIMEK: They can, but as you know from an incident that happened here in the Lincoln Public Schools, that person...it was some time before a person was discovered and asked to leave the building. And then, as I recall, that person then disappeared into the restroom. So that's not a surefire... [LB81]

AMY MILLER: It's not, but also the bill that's before us isn't either. The reality is that bad actors who have bad intent, and with the incident that happened in Lincoln recently where the person illegally entered the school without any reason to be there and lurks with the intent to abduct and molest a child, LB81 wouldn't reach that. The criminal trespass statute would prohibit it, but as is true in many cases, you can put up barriers in the law. What is more appropriate is to have people on the ground to be trained in this procedures. The Lincoln Public Schools probably should have been locked buildings to begin with, as many of the schools across the state already were. I didn't see that change happen until after that incident when I began going in and out on my mentoring programs. [LB81]

SENATOR SCHIMEK: Thank you. [LB81]

SENATOR ASHFORD: Thank you. Any other opponents? Do we have any neutral testers? [LB81]

COLEEN NIELSEN: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, testifying on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB81. The comments that I received from my members basically had to do with the first part of the bill. None of them actually got to Section 3 of the bill. But as I understand it now, with the language that has been stricken, it is a Class I misdemeanor under this bill, to enter on a campus or a school grounds, and if asked to leave by a school official and a person refuses to do so, they are guilty of a Class I misdemeanor. The only thing in here...the only reason that the school official has is that he makes a reasonable request. And it's difficult to know what a reasonable request would be, so anybody could be guilty of that if a school official asks them to leave and they refuse to do so. I agree with previous testimony that there probably is ways in the law that these situations can be dealt with. But in addition to that, the other comment that I have on this bill is that on page 3 with regard to the warrant, a person could be arrested under this act without a warrant, and that includes situations where a person might be in their home. So we think that that portion is unconstitutional. [LB81]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Thank you, Coleen. Any questions of Coleen? Thank you. Senator Schimek? [LB81]

SENATOR SCHIMEK: No, thank you. (Laughter) [LB81]

SENATOR ASHFORD: Very good. Let's move right along. LB491. How many testifiers do we have on LB491? Good. How about LB692? Okay. LB695? All right. Senator Harms is on his way and then we will...we're ready for LB491. Good afternoon, Senator Harms. [LB81 LB491]

SENATOR HARMS: Senator Ashford and committee members, my name is John N. Harms, H-a-r-m-s, from the 48th Legislative District. Thank you for giving me the opportunity to come in and visit with you about LB491. This is really amending 69-2441 and it's to clarify the participation of colleges and universities to be included in the concealed handguns, which we thought would be in the statute last year and it was not. Let me just kind of back up here and just for a little bit of history for some of you, that LB454 was introduced last year by Senator Combs. And this was placed on the floor and it was debated in January 11. And in that discussion and in the debate, Senator Flood began to ask questions about the definition of schools. Now I won't take you through that, but I do have the documentation if you would like to look at it. And as they went through this process, Senator Combs indicated that school was to include colleges and universities. Well, after that was over and the bill was passed, President Milliken from the university asked the Nebraska Attorney General about does this really mean that the definition would include the university in a school definition. I do have the Attorney General opinion here and I won't read it to you. But the conclusion was that, no, it did not. It did not include schools because in the definition of Nebraska law, that it actually includes only K-12. So that's what brings me back here today, is to ask that we include university and colleges into this bill because that was the intent of the Legislature and that was the intent of Senator Combs. And so that's what I'm here today to ask you to do that. Do you have any questions? [LB491]

SENATOR ASHFORD: Any questions of Senator Harms? [LB491]

SENATOR HARMS: Senator Chambers. [LB491]

SENATOR CHAMBERS: Senator Harms, on page 2, why are these other words stricken: school, school grounds, school-owned vehicle, or school-sponsored activity? Are they reinstated someplace else? [LB491]

SENATOR HARMS: Yeah, I think they are, Senator. Let me pull that up and look at that. Yeah, I think they are. I think later down it talks about public schools, private schools, talks about building grounds, vehicles, sponsored activities. [LB491]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: Okay. [LB491]

SENATOR HARMS: Yeah, they are listed there. Thank you, that was the question. Any other questions? [LB491]

SENATOR CHAMBERS: Let me tell him why I asked the question. I'm the senior member and do you see, the first time you came, you corrected me on something that I missed. So that should encourage you to keep doing that. (Laughter) [LB491]

SENATOR HARMS: Yeah, thank you. Well, I'm quite sure you're going to correct me on the floor. (Laughter) So I'm looking for that opportunity. So thank you very much, appreciate it. Any other questions? [LB491]

SENATOR ASHFORD: I don't...yes, Senator Lathrop. [LB491]

SENATOR LATHROP: I have a...and forgive me, because I missed part of your introduction. [LB491]

SENATOR HARMS: That's okay. [LB491]

SENATOR LATHROP: I don't know if you covered this. But it looks like what we've done is we've broadened the exceptions or the places you can't take a concealed gun to, the university... [LB491]

SENATOR HARMS: Just to colleges and universities. [LB491]

SENATOR LATHROP: But on the page, the last page, we've taken somebody who violates this act and they've gone from shall having their permit revoked to may having their permit revoked. Is that something that you did intentionally? [LB491]

SENATOR HARMS: No, I don't think so. That might be... [LB491]

SENATOR LATHROP: Maybe take a look at page 4 for me. [LB491]

SENATOR HARMS: Yeah, I will. Sure. And what was that again? Where was that located? [LB491]

SENATOR LATHROP: Lines 16 through 21. [LB491]

SENATOR HARMS: Sixteen through 21 on page... [LB491]

SENATOR LATHROP: Four of the bill. [LB491]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR HARMS: Four? [LB491]

SENATOR LATHROP: See how lines 16 through 18 say that the permit holder who violates this section shall also be subject to revocation. [LB491]

SENATOR HARMS: Yeah. [LB491]

SENATOR LATHROP: And that appears to be stricken and replaced with "may."
[LB491]

SENATOR HARMS: It probably should stay as shall. [LB491]

SENATOR LATHROP: Okay, that wasn't something you did intentionally? [LB491]

SENATOR HARMS: No. [LB491]

SENATOR LATHROP: Or requested or asked for? [LB491]

SENATOR HARMS: No, I did not. [LB491]

SENATOR LATHROP: All right. [LB491]

SENATOR HARMS: The only thing I wanted to just make sure is that the colleges and universities are included. [LB491]

SENATOR LATHROP: That's what I thought because we talked about it. [LB491]

SENATOR HARMS: Yeah, that's what the intent of this is all about. So you definitely have the opportunity to make your changes as you see in the committee. But that's all I'm after. [LB491]

SENATOR LATHROP: Sure. I just wanted to find out if that was deliberate or unintentional. [LB491]

SENATOR HARMS: No, it's not. Well, I would like to close if there's... [LB491]

SENATOR ASHFORD: Senator McDonald has a question, I think. Or Senator Pirsch does, I'm sorry. [LB491]

SENATOR PIRSCH: I was just going to say, was that a Bill Drafters mistake then, this shall to may? [LB491]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR HARMS: I think it probably was. It's just something I didn't catch when I went through it. [LB491]

SENATOR ASHFORD: Thanks, Senator Harms. Any other... [LB491]

SENATOR HARMS: Any other questions? []

SENATOR ASHFORD: Do you intend to... [LB491]

SENATOR HARMS: Yes, I would like to close when they're done. [LB491]

SENATOR ASHFORD: Oh, like to close. (Laughter) I was going to ask if you had a choice and you said yes, which leaves it wide open. (Laughter) So that's fine. Any other proponents? I've got to speak more quickly or more clearly. [LB491]

RICHARD WOOD: Chairman Ashford, members of the Judiciary Committee, my name is Richard Wood, W-o-o-d. I'm general counsel for the University of Nebraska, appearing in support of LB491. I think Senator Harms has very well explained the reason for this bill. If passed, it will permit the university to continue to enforce its historical policy of prohibiting the carrying of guns in any form on university property and will remove the requirement that exists under the current law that we would have to post conspicuous notices. Under the law as it is now, if we were to, in other words, take benefit of the provisions of the bill that prohibit even permit holders from carrying concealed handguns on university property. This will remove the expense and uncertainty as to whether or not we've adequately posted. [LB491]

SENATOR ASHFORD: Thanks. Any questions? [LB491]

SENATOR PEDERSEN: Thank you, Senator Ashford. Can you carry a gun unconcealed on university property? [LB491]

RICHARD WOOD: No, sir. The historical policy of the university on all university property statewide is no guns can be carried on university property. [LB491]

SENATOR PEDERSEN: Does that include students who might have a shotgun or a rifle in their trunk when they head on the way home? [LB491]

RICHARD WOOD: Students, there is an exception at the University of Nebraska-Lincoln under its code of conduct where a student may bring a shotgun that is then kept with the university police. And then that individual can check that gun out if he's going to go hunting, for example. [LB491]

SENATOR PEDERSEN: Thank you. [LB491]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

RICHARD WOOD: But so far as carrying even a shotgun on university campus, that's not permitted. [LB491]

SENATOR PEDERSEN: Or leaving it in his car, that's my...okay, thank you. [LB491]

SENATOR ASHFORD: Thanks, Dick. Any other...yeah, Senator Pirsch. [LB491]

SENATOR PIRSCH: To your knowledge, and you may or may not know this, currently at UNL you have to post that policy, correct, to enforce that... [LB491]

RICHARD WOOD: That's correct. [LB491]

SENATOR PIRSCH: ...and it has been enforced. Are you aware of any college or community college or public university, private or public university that currently allows...that does not post that and allows for concealed weapons to be... [LB491]

RICHARD WOOD: Senator Pirsch, I am not. We have done some posting under the current law. The difficulty that we have because of the size of the campuses is whether or not that posting is adequate because there isn't just one place to enter the university campus. There's hundreds of places. And so posting would be very difficult. And if it would be determined by a court that we haven't adequately posted, then the law could not be enforced on the university property. [LB491]

SENATOR PIRSCH: Thank you. [LB491]

RICHARD WOOD: Yes, sir. [LB491]

SENATOR ASHFORD: Anyone else? Thanks, Dick. Thank you. [LB491]

RICHARD WOOD: Thank you. [LB491]

BRAD SHER: (Exhibit) Members of the committee, my name is Brad Sher, spelled S-h-e-r. I'm the vice president of managed care and public policy at BryanLGH Medical Center here in Lincoln, Nebraska. We support LB491 and urge the committee to amend the bill to prohibit the carrying of concealed handguns in Nebraska's hospitals. And if you look at the legislation now, and I'm not going to read the whole thing, but if you look at the provision that talks about emergency room or trauma center, and there's confusion about how you define a trauma center and so forth. So, for example, on the west campus here in Lincoln down on South Street, that's a trauma center but east is not a trauma center. And you could not have an emergency room but you can have the rest of the hospital. Although the law provides hospitals with the ability to prohibit the carrying of concealed handguns within their facilities, exempting handguns from

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

emergency rooms and trauma centers but not from hospitals in general is simply illogical and confusing for Nebraska's residents. In order to clarify those nebulous statutes, we would like to have the bill amended to prohibit carrying concealed guns in all Nebraska hospitals and just keep hospitals safe havens for people in need of care. So we just want to ask for that and we've talked to senator about that and address it. [LB491]

SENATOR ASHFORD: Thanks, Brad. Yeah. [LB491]

SENATOR CHAMBERS: So then in hospitals it would be like it is now with the only ones who can legally kill people in hospitals are doctors. (Laughter) Everybody takes their lumps. But I do think that's a very good amendment and it's one of those things that ought not to have been overlooked. But it's good that various entities and groups are reading the law to bring us those other exemptions that ought to be put in it. [LB491]

BRAD SHER: Yeah. We have the same issue of posting, too, so where do you put it and a lot of access. [LB491]

SENATOR ASHFORD: Thanks, Brad. [LB491]

BRAD SHER: Thank you. [LB491]

THOMAS O'NEILL: Senator Ashford, members of the Judiciary Committee, I'm Tip O'Neill, that's O-'-N-e-i-l-I. I'm the president of the Association of Independent Colleges and Universities of Nebraska, a consortium of 14 privately controlled nonprofit colleges and universities located in Nebraska. We are in support of this bill. I think it points out, first of all, the difficulties of trying to do something when you don't have defined terms in a penal statute. There is always going to be some uncertainty and we'd like to create some certainty in this instance. The final comment I want to make is that in defense of the Bill Drafters and, again, I think the change in here was a Bill Drafter change, "shall be subject to revocation" is the same thing in my opinion as "may." So it doesn't say "shall be revoked." It's "shall be subject to" is permissive and not mandatory in my opinion. I'd be happy to answer any of your questions. [LB491]

SENATOR ASHFORD: You would know, Tip. I mean, you would if anybody would. (Laughter) That's a compliment. [LB491]

THOMAS O'NEILL: You know, the last time I was in here I think, Senator Ashford, was when Senator Hoagland was Chair of the committee. And Senator Schmit used to send me down to introduce his bills. And so this is much better. Thank you very much. [LB491]

SENATOR ASHFORD: I'm honored to follow Peter in this role. Jim. [LB491]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

JIM CUNNINGHAM: Senator Ashford, members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I am appearing in my capacity as executive director of the Nebraska Catholic Conference, representing the archdiocese of Omaha and the dioceses of Lincoln and Grand Island, which together operate 120 private elementary and secondary schools, educating almost 30,000 young Nebraskans. Just want to indicate support for this change, to thank Senator Harms for clarifying that school in this context does mean private schools as well as public schools. I think it's a good clarification. And one of the things that I think is important about it is that part of the training process for a person to get a permit is that they must have exposure to the state laws that relate to this particular permit. And so it will establish right up front as part of that process that school means private school as well as public school. Thank you. [LB491]

SENATOR ASHFORD: Thank you, Jim. Questions? Thank you. [LB491]

JIM CUNNINGHAM: Thank you. [LB491]

SENATOR ASHFORD: Any more...any other proponents? Opponents? Neutral? Senator Harms. [LB491]

SENATOR HARMS: Senator Ashford, committee members, thank you very much for giving us the opportunity to clarify this. And I appreciate your support and you help and I think it will be helpful to the colleges and also to the hospital. I support that very strongly so thank you very much. [LB491]

SENATOR ASHFORD: Thanks, Senator Harms. Thank you all. (See also Exhibit 11) LB692. Senator Hudkins is here. Good afternoon, Senator Hudkins. [LB491]

SENATOR HUDKINS: (Exhibits 12, 13, 14, 15, 16) Senator Ashford, thank you. Good afternoon, everyone. I am Senator Carol Hudkins, C-a-r-o-l H-u-d-k-i-n-s, and I represent the 21st Legislative District. I'm here today to introduce LB692. Having come from a rural background, I am often amazed at how quickly people forget that the area around Lincoln and many other areas of the state are not totally barren of other human life. LB692 is a bill to remind certain individuals about two common firearm safety rules. Number one, do not shoot when you don't know what you're shooting or what is directly behind what you're shooting at, and number two, don't shoot in close proximity to inhabited areas unless you have permission or it's your own property. Both of these rules are for the protection of the public and are rules based upon common sense and courtesy to your neighbors. However, there are those people in our society that have lost both their common sense and their courtesy. I am passing around to you an aerial photo. This is an area in Lancaster County, and I'll wait until those are around so we can look at it together. This is an area that is just northwest of Pawnee Lake in western

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

Lancaster County. The overhead view that you see shows a number of houses. I count one, two, three, four, five, six, seven, okay? The house the farthest south is the home with the problem. There are three other homeowners in this development who are regularly discharging firearms. Despite repeated requests to discontinue the practice, the shooting goes on. There are children living in these other homes. There are dogs, cats, horses, and obviously squirrels and deer and all those kind of things. Within this area where the houses are, there are 15 other homes within a mile and safety is what is the driving force of this bill. I also have another sheet to pass out to you, and if you would turn to page 2 of the first handout you'll see more of those other houses that I talked about. And then if you turn to the third page, it's a little farther away, but that black spot down at the bottom is Pawnee Lake, okay? Thank you. The sheet that you're getting right now--and I'm sorry that some of them are black; I was going to highlight these and then decided against it, but I hope you can read what is in the highlighted version. I asked Game and Parks to provide with a list of fairly common firearms and how far that, under ideal conditions--wind, trees, whatever--how far those guns could shoot. The first one that's blacked out on yours--it's highlighted on mine--is a 22 Remington. That shell can go 1.42 miles. There's another one, a 270 Winchester, two-and-almost-a-half miles. A .30-06, over three miles, and you can read the rest. I asked law enforcement this morning up on the floor--actually, he was in the balcony--what are the firearms that law enforcement carries. And he said, well, it depends, but usually a nine millimeter, and that one, as you can see, goes over a mile, and a 45, which also goes over a mile. Then you look at the third portion of that handout and it talks about shotguns, and basically, 200 yards will catch most shotguns. So that's that handout. I've received several e-mails saying that this bill infringes on the recently passed legislation governing concealed carry. Well, that's not true. I supported concealed carry, so I'm not going to do anything here that's going to change it. What I'm doing, if you look at this map, is actually restrict where shooting can be done, because of safety reasons. There's nothing in this bill that prohibits the carrying of a concealed weapon. It just says that you can't shoot within 200 yards of an inhabited dwelling. Another e-mail that I got indicated that I would be criminalizing self-defense. Again, that's not true, because self-defense is an affirmative defense, and the last time I had a conversation with a prosecutor, he said, well, if you're engaged in conduct to protect yourself from someone who is intent on harming you or others, you're not going to be charged with a crime of discharging a firearm within 200 yards of an inhabited dwelling. Now if the committee feels that some of this language can be cleaned up a little bit, I would not be against such an amendment. This bill is meant to balance property rights and safety issues of individuals with the rights to shoot firearms, with the rights of other individuals who think that their kids are out in the yard. They've already had a cat shot. They've already had a dog shot, and they're concerned about that. So I would ask you to seriously consider this. You are going to be hearing law enforcement--not law enforcement. You are going to be hearing from sportsmen's groups and their opposition to this. But after they get done, I'll tell you why you should not pay any attention to that. (Laughter) So if you have questions, I would be glad to try to answer them at this time.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

[LB692]

SENATOR LATHROP: And it sounds like you'll close. [LB692]

SENATOR HUDKINS: Yes, I will. [LB692]

SENATOR LATHROP: Thank you. Does anybody have any questions for Senator Hudkins? [LB692]

SENATOR CHAMBERS: I'm glad I'm on the same side with Wonder Woman.
(Laughter) [LB692]

SENATOR LATHROP: No questions? Thank you. Are there proponents? [LB692]

SUSAN SPIEKER: My name is Susan Spieker, S-u-s-a-n S-p-i-e-k-e-r, and if you look at the overview she gave you, we're living in the house that's farthest south, kind of in the center of the square. And we lived there 21 years, and the average size of these acreages are like three acres. That particular acreage at the bottom there, that's ours, goes back a little farther, so we share a fence line of two acreages. We have a shooting problem out there. Two of the residences that shoot guns out there, one is a State Patrol officer, and one is a Lincoln police officer. And some of the things they shoot are...I'm very fearful of. I won't go outside of my house, won't let my child outside when I hear these guns going off. They shoot machine guns. They shoot a binary target, explosive target, which sounds like a bomb going off, literally. The risk of us getting hurt out there is off the chart. It's off the chart. We've had animals killed, and not to mention...I will mention the noise disturbance. The last time that one of the police officers shot all of his ammunition I called and I asked him what he was shooting. And I said I assume you have permits for this, which he said he did, but it was so disturbing. I had to go downstairs in my basement and put pillows over my head to try to drown the sound out, and there's no way I would have stepped outside--there's no way. It is an incredible safety issue. These acreages are very close together. We're all real close, within 200 yards, easily under 200 yards of each other. I just don't feel like I can live out there comfortably when I'm in fear of where their bullets may go missing their target, and the noise is another factor on its own, but it's very disturbing to listen to. That's all. [LB692]

SENATOR LATHROP: Okay, thank you. Any questions? Senator Chambers. [LB692]

SENATOR CHAMBERS: Ma'am, out of curiosity, had you ever approached the Lincoln chief of police or the colonel of the State Patrol? [LB692]

SPIEKER: I had...oh, the two officers out there? Yes, I have. On the last particular incident, when there was so much shooting going on, I called them both and the State

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

Patrol officer didn't say very much. I said, are you comfortable with this? And he didn't say much, and I just said, well, I'm not. And I said, I probably will get law enforcement involved, and he said okay. And I called the Lincoln police officer, which I've talked to in the past, but...and he was very nice, but I was distraught and I said, you know, I'd like to know what you're shooting up there. This is bizarre. I said, it's just bizarre. I mean, I've seen them wear head, or sound protection, for themselves when they're shooting up there, and he told me, and I said, you know...he said, is it bothering you, Sue? And I said, I can't believe you asked me that question. This is bizarre. I said, I can't handle it. (Laugh) I said I know it's not illegal, so I can't tell you to stop. And he said, well, you know, we'll probably finish up soon, but it went on all afternoon. And I'm not concerned that they're law enforcement. That doesn't make any difference to me. We have another neighbor next to us that isn't in law enforcement that's also starting the shooting thing going, and that's extremely close to us. When I first heard that shot go off, I was at my computer at my desk, and I felt the impact. The felt the vibration of the...I don't know how to explain it. I felt the vibration of the gun through my walls, in my chest. That's how strong...that's how close that is to our home. It's close. And I went outside to videotape it as best I could, and I could barely stand up, because the...when a shot would go off, the camera jerked, also. It was... [LB692]

SENATOR CHAMBERS: You know what I wish you would do? I wish you would write me a letter about this, and ask is there anybody with the Lincoln police department I can talk to, or anybody with the State Patrol, and I will directly contact the chief, and I'll contact the colonel. [LB692]

SPIEKER: I have contacted a Sergeant Novacek. [LB692]

SENATOR CHAMBERS: Well, a sergeant is...no, the chief is over the sergeant, and he's responsible. They're supposed to protect and serve all the time. They're supposed to do nothing that brings the law enforcement into disrepute, and if they do it, whether on duty or off duty, they're violating the requirements of their job. So they may not listen to you, and maybe they won't listen to me, but I'll take a crack at it. So if you're willing to expend the amount of time that it would take to write me that request, then I will look into it and see what I can do. [LB692]

SUSAN SPIEKER: I just think it's a real dangerous situation that, you know, I can't go outside on my own property. If I'm at the back of that property and I hear a gunshot go off, I'm going to hightail it for the house, because I'm scared. Our cat did get shot, and it's from this activity. [LB692]

SENATOR CHAMBERS: And it does stress out four-footed and two-footed creatures, all that noise, the concussion and... [LB692]

SUSAN SPIEKER: It stresses me out, but... [LB692]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: Right. That's all I would have, though, if you're willing to do that. [LB692]

SUSAN SPIEKER: Yes, I would be. Any other questions? [LB692]

SENATOR LATHROP: Thank you. Any other questions? Thank you for coming down. [LB692]

DANIS WILLET: Good afternoon. My name is Danis Willet, spelled D-a-n-i-s W-i-l-l-e-t. Left school this afternoon so I could be here, so. I do teach for LPS. I'm a Catholic, but I'm not with the Mafia, so I hope that's okay, (laughter) after some of the other discussion I've heard today. So I'm really here to support LB692, because we've had our own share of incidences with neighbors shooting. A neighbor kid would shot off his deck at targets directed down into the ground, which was actually in the same direction of a farmhouse behind us, and not so far off from our house and a neighboring house between. So they were shooting, say, down the middle--we're on the right, other farmhouse is on the left. Acreages also are about three acres or so right around that area. We have 20 acres. We have guns, but we don't shoot them near our house. We don't think it's safe to shoot it. We have children. I'm going to have grandchildren out there someday. I love my farm. We have animals; we raise sheep, horses, cats, dogs, chickens, and one lone turkey that is a pet. So he's not dinner. I just really feel like there's no regulation out there to help protect some of the people that are out there who...we come out because we want to feel like, you know, that's the lifestyle we enjoy, to feel safe out in the country and still, you know, have our farming communities be able to do it safely. And when people come out to the country, they think they can sometimes do whatever they want, just because they're on an acreage now, and they don't live in city limits. If we're not allowed to shoot in city limits, why should we be allowed to shoot next door to your neighbor's house, even though it's a quarter mile away or an eighth mile away. That's still not safe, because these shells can go pretty far. State of Nebraska, Game and Parks Commission put up signs around 200 yards for shotgun hunting near even Sue's house, that you can't shoot past that. So if they want to protect people in the community around hunting areas, why is it any better for us just to allow it in acreages, you know, out in the regular community of homesteads and small acreages. You know, at least we don't have to worry about motorcycles around the neighborhood, but I think it's far worse to be worrying about not the motorcycle courses, but the guns and the shells that can fly up there. That's all I had. Do you have any questions? [LB692]

SENATOR ASHFORD: Thank you very much. Thank you. No questions? Thanks for coming. [LB692]

DANIS WILLET: Thank you. [LB692]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Proponents? Any other proponents? Opponents? Opponent? Opponents would be ready. Thanks. [LB692]

JOE HERROD: Good afternoon, Senator Ashford, members of the committee. My name is Joe Herrod, H-e-r-r-o-d. I'm here representing the Nebraska Council of Sportsmen's Clubs. We have over 100 clubs and several thousand members, and I really hate to be here, placed in a situation by a couple of real jerks, doing something that no sane person would do. But I think that there's other avenues against these people, because I know of an instance...and by the way, Senator Hudkins is pretty crafty. You might have noticed she called me out in the hall, talked to me for awhile. Now she's got it all figured out what she's going to say in rebuttal. (Laughter) So...but she's been an awful good friend of all of us sportsmen and things so. Let me first give you real quickly some ideas about hunting, as far as this whole thing, saying that hunting...there's anything dangerous about hunting. Last year there was 130,000 to 150,000 hunters in the state of Nebraska. They have to report every incident that happened with a firearm that resulted in injury. There were seven injuries, all caused by people being pretty stupid around each other--seven minor injuries. That is, as a percentage factor of those people involved in hunting, .00005. So there's nothing inherently dangerous about hunting, and when Senator Chambers talked earlier about fear and paranoia, some of the laws that came in about hunting 200 yards from a residence were fear and paranoia back in those days, because as I told Senator Hudkins out in the hall, I know how that law originally came about. And it really didn't affect anything for a great many things until people started to move out and build acreages, and then it took away the property rights of the guy that had always hunted on his own ground, because the ground next to him sold to somebody that built a house on it, and he could no longer take his grandchildren over there and go hunting, so to speak, on his own property. So there is a property rights situation here. But I think...and like I say, these guys that are doing this are real jerks. They're getting around the law. But this same thing, as I told Senator Hudkins, happened out on East O Street a few years ago, and there was a gentleman out there that had a dispute with his neighbors, and he brought a replica gatling gun, and I even know his name, so we could look...I think I could think of his name. But he went out and shot it off to irritate his neighbors, and he was arrested and he was fined for disturbing the peace. And it seems very logical that that's an avenue here to address this situation. I don't think you should make a great big broad brush to the whole state of Nebraska and say, your property rights are no good 200 yards until...if you're within 200 yards of somebody else, you could not go out and hunt any more. You could not go out and shoot any more. That's too broad to me, and across the whole state of Nebraska, to get after two jerks out here that really need to be talked to and be arrested for disturbing the peace. And I see the stop sign is on, so now Senator Hudkins can hammer away at me. Questions? [LB692]

SENATOR ASHFORD: Senator Chambers. [LB692]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: Would three feet unreasonable? [LB692]

JOE HERROD: Well, this of it in this way, 200 yards...if it's reasonable at 199 yards, and it's unreasonable at 200...or it's...if one and one, then you're talking three feet right there, because the difference between 200 yards and 201 yards is three feet. [LB692]

SENATOR CHAMBERS: You just said in a different way...you proposed a question that has been asked. If a person starts ten feet away from a wall, and moves half the distance from where he or she is to the wall, will that person ever reach the wall? [LB692]

JOE HERROD: If a person starts answering Senator Chambers' questions, he's eventually going to reach a box. (Laughter) [LB692]

SENATOR CHAMBERS: That's all I have. [LB692]

SENATOR ASHFORD: Thank you very much. [LB692]

JOE HERROD: Thank you. And I have compassion for you people. [LB692]

SENATOR ASHFORD: Further opponents? [LB692]

BILL SCHULTZ: (Exhibit) Good afternoon, Senator Ashford and members of the Judiciary Committee and other participants. My name is Bill Schultz, spelled S-c-h-u-l-t-z. I live in District 12 in Omaha. I represent the Nebraska Marksmanship Association. I'm also an active member of the Eastern Nebraska Gun Club. The NMA is a statewide...Nebraska statewide association, which is also an NRA-affiliated organization. Today I rise in opposition to LB692. LB692, as written, does nothing more than blatantly abuse law-abiding citizens' Second Amendment rights. It will give any and all criminals an overwhelming sense of comfort, knowing that they are being protected from firearms by Nebraska state law during any criminal act. Then LB692, as it is written, criminalizes any and all decent law-abiding citizens who choose to discharge a firearm to defend their homes, property and lives by charging them with a Class III misdemeanor. If a person chooses to discharge a firearm within 200 yards of their house to defend their property, their lives or any occupied dwelling as defined, like a motor vehicle or an aircraft, they become the criminal. That, senators, is just plain wrong. LB692 should be amended to say on page 2, line 17, in place of "guilty of a Class III misdemeanor," you should enter "give that law-abiding person a medal of courage for standing up and defending his or her property and rights." LB692 is nothing more than a hidden agenda to be used by antigunners as one way of criminalizing concealed carry. With all due respect to Senator Hudkins, LB692, as written, is bad legislation. According to Article I of the Nebraska state constitution, we also believe this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

legislation to be unconstitutional. The statement of rights reads as, all persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed. The Eastern Nebraska Gun Club membership and the NMA collectively have voiced disapproval of this proposed legislation. LB692 serves no useful purpose for Nebraska citizens. We urge the committee to kill LB692. Thank you for your opportunity to listen. [LB692]

SENATOR ASHFORD: Thanks, Bill. Any questions of...I'm sorry. Senator Schimek. I have to...Senator Schimek. [LB692]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Mr. Schultz, I wasn't going to ask any questions on this, but I just have to challenge something that you have here, and something that you said about the right to bear arms. And if you look at what you said, you have life, liberty, and the pursuit of happiness first in line. You know, it comes before the right to keep and bear arms. It is probably the most essential part of your whole statement, and I think that there are people who do feel that their life, liberty, and pursuit of happiness are threatened under some of these circumstances. Now this bill may not be the vehicle to solve it, but if it is, then I would definitely, definitely vote for it, because I think their rights, you know, come before the right to bear arms. The right to bear arms isn't absolute, in my opinion. But that is my opinion. [LB692]

BILL SCHULTZ: Well, that's where we differ. [LB692]

SENATOR SCHIMEK: Yes. [LB692]

BILL SCHULTZ: In my opinion, this is absolute (laugh), because you know,... [LB692]

SENATOR SCHIMEK: Your freedom ends, though, where you have infringed upon somebody else's freedoms, I believe. [LB692]

BILL SCHULTZ: Oh, I don't disagree that, you know,...there is something of an issue that certain people need to deal with. You know, now whether it be they move, because they don't like the environment...it's kind of like who came first? The chicken or the egg. [LB692]

SENATOR SCHIMEK: I think they were there first. I think they've been there 20 years. She said that in her statement, and these other people are newer. But anyway, I don't want to argue with you about it. I don't want to...but I just think that your statement itself

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

says it all--life, liberty, and the pursuit of happiness are pretty fundamental. [LB692]

BILL SCHULTZ: But the only reason you have that is because of the Second Amendment, and that's a fact. [LB692]

SENATOR SCHIMEK: Thank you. Thank you. [LB692]

BILL SCHULTZ: Thank you. [LB692]

SENATOR ASHFORD: Okay. (Laugh) Yes, sir. [LB692]

SENATOR CHAMBERS: Mr. Schultz, do you believe a person has the right to the peaceable enjoyment of his or her property? [LB692]

BILL SCHULTZ: Yes. [LB692]

SENATOR CHAMBERS: Do you believe that if I have property abutting yours, I have the right to use mine and do things on mine which interferes with your right to peaceably and peacefully enjoy your property? [LB692]

BILL SCHULTZ: Within reason. [LB692]

SENATOR CHAMBERS: And who determines what is within reason? [LB692]

BILL SCHULTZ: Each neighbor, working with each other. [LB692]

SENATOR CHAMBERS: Say it again. [LB692]

BILL SCHULTZ: Each neighbor, working with each other. [LB692]

SENATOR CHAMBERS: Well, actually, the neighbors don't, but let me ask you this question. If I read what you read, what you gave to us, and take it, as written, show me in your quoting of what you say is this constitutional provision, where it says that...you can keep and bear the arms for these various purposes, but show where it says that that arm can be discharged, fired, or shot. [LB692]

BILL SCHULTZ: I guess from my perspective it's no different than owning a set of golf clubs. [LB692]

SENATOR CHAMBERS: Say it again. [LB692]

BILL SCHULTZ: It's no different than owning a set of golf clubs. Do you drive golf... [LB692]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHAMBERS: But no, that's not what I asked you. Can you show me where it says that that firearm can be discharged, fired, or shot? [LB692]

BILL SCHULTZ: It does not say that. [LB692]

SENATOR CHAMBERS: Then why do you think anybody under this provision has the right to shoot a firearm, to discharge one? Why do you think that this constitutional provision brings you that right, when it doesn't say so? [LB692]

BILL SCHULTZ: So what you're saying is that you can own a gun, but you can never shoot it. [LB692]

SENATOR CHAMBERS: I'm asking you. I'm not saying anything. You gave this to us, so I'm just asking you, because you mentioned the way Senator Hudkins' bill is actually written, certain things are prohibited, when they're not prohibited by the language of her bill. So if you can read things into her bill and say "as written" it does these things, I want you to show me where this constitutional provision, as written, gives a person the right to discharge a firearm. It's not in there, is it? [LB692]

BILL SCHULTZ: No, it isn't. [LB692]

SENATOR CHAMBERS: Okay, and you can do all of these things. You can defend yourself without firing it. As you said, like a golf club. And our brothers and sisters from the Stone Age used implements similar to that. You can go hunting, although the quarry may be limited that you can bring down, without firing the firearm. You can use it for recreational use. I hold one end, you can hold one end, and we can see if Senator Hudkins can jump over it. (Laughter) But what I'm getting at is this: People will cite the Second Amendment to the U.S. Constitution, and all it says is the right to keep and bear arms, but it doesn't say all of the other things that people want to say that it says. They extrapolate from that and add this and add that, and say, well, if it says this, then it means this, which in turn means that. And by the time you get through, they have things that were not...only not stated by the Second Amendment, but if a person reads history, were not contemplated by those who put that language there. So like Senator Schimek, I disagree with your interpretation. However, tailgating on what the very wise gentleman said before you, gunsels get a very bad reputation, especially when you have law enforcement officers making it impossible for a person to live in peace in his or her own property, feeling the concussion from these firearms that are being discharged. The chief of police will not do anything about it, the colonel of the State Patrol won't do anything about it, and that's why the question is asked, who will police the police? Or in this instance, Senator Chambers is going to give it a try. I understand everything you're saying, but it doesn't convince me that you on your property have the right to do things that pose a hazard, that create psychological stress, virtual torture towards your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

neighbors. You know why I say torture? They found out what was being done to various people suspected of being terrorists--loud noises--so that is known to pose a problem. The gentleman before you said they are a couple of jerks doing these bad things. Do you approve of what those jerks are doing? [LB692]

BILL SCHULTZ: No. [LB692]

SENATOR CHAMBERS: To whom can a person turn, if not the Legislature? [LB692]

BILL SCHULTZ: Senator Chambers, you're going to go visit with their boss. (Laugh) [LB692]

SENATOR CHAMBERS: You're as smart as the other one. That's all I have. Thank you. (Laughter) [LB692]

SENATOR ASHFORD: Thanks, thanks. [LB692]

SENATOR LATHROP: Can I ask just one question? [LB692]

SENATOR ASHFORD: Yes. Bill, can... [LB692]

SENATOR LATHROP: I appreciate your concerns that are found in this bill. Let me ask you this: If there were an exemption to...in the bill itself, for the discharge of a firearm in defense of one's self or the property, as otherwise permitted in the law, would that satisfy your concerns, or would you still have an objection? [LB692]

BILL SCHULTZ: It would...yes. You take the Class III misdemeanor out of it. There should be no penalty. If you want to make it illegal,... [LB692]

SENATOR LATHROP: Let me make sure I understood. Did you...do you have two problems with it? [LB692]

BILL SCHULTZ: Oh, I have a problem with the whole thing, the way it's written. [LB692]

SENATOR LATHROP: Well, my question was, if there was an exception for use of a firearm within 200 yards of your neighbor when you are defending your property or your person, as otherwise permitted by the law, is that your objection? [LB692]

BILL SCHULTZ: Yes,... [LB692]

SENATOR LATHROP: That's what I'm getting from your testimony. [LB692]

BILL SCHULTZ: ...as long as you can use...as long as we have the opportunity, in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

writing, without being penalized, I don't have a problem with it. [LB692]

SENATOR LATHROP: Your concern is, is that if somebody is coming through the window of your house and you use your gun, you're going to be charged. [LB692]

BILL SCHULTZ: My car, my house, wherever I happen to be. If I had a license for concealed carry, it's wherever I happen to be. [LB692]

SENATOR LATHROP: Okay, thank you. [LB692]

BILL SCHULTZ: You're welcome. [LB692]

SENATOR ASHFORD: How many more... [LB692]

PAUL H. SCHEERER JR.: I think I'm the last one, sir. [LB692]

SENATOR ASHFORD: You're the last opponent. Any neutral testifiers on this bill? Thanks. [LB692]

PAUL H. SCHEERER JR.: Afternoon gentlemen, ladies. Paul Scheerer, S-c-h-e-e-r-e-r. I'm a member of the Izaak Walton League, and just to give you a little bit of background on my own association with firearms, I started target shooting at the age of 13 in a place that most of you might never have lived, Brooklyn, New York, on a rifle and pistol club, and I've been doing this for years. I want to say one thing before I even begin, that I'm in much sympathy with the proponents of the bill that Carol, Senator Hudkins, introduced. I believe, though, that legislation of this type, LB692, is not appropriate for the issue at hand. Irresponsible behavior by a citizen--two citizens in this case--is not appropriate. The NRA doesn't teach that, doesn't advocate it. I'm a hunter. I go out and I don't do the things that have been done in this particular instance, and I do believe there's a difference between hunting and the discharge of firearms. The Game and Parks put in the hunting permit within 200 yards, which was to identify to people, it is dangerous with a firearm if you don't know your backstop, you don't know what you're shooting at. And I think that has to be taken into consideration. There has to be other methods of handling this particular case as Senator Chambers says, with the colonel of the state police, the police chief in Lincoln, also with his people. That's where the issue resides. It should be resolved. There's no excuse for anybody having to live in fear in their home from a lawful pursuit of what one does; i.e., hunters and regular target shooters. We have a range out there on...in east Lincoln. Somebody could come up to our fence, build a house on the fence, and be within that 200-yard range, as is described by this bill, and I would think that would be irresponsible for the efforts that our club and organization takes to provide for safety, and I want to just bring before this committee that thought. I believe there are other means for this, and I would welcome any questions from what I've stated. [LB692]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Any questions of Mr. Scheerer? Thanks, Paul. [LB692]

PAUL H. SCHEERER JR.: Thank you. [LB692]

SENATOR ASHFORD: Senator Hudkins? [LB692]

SENATOR HUDKINS: Thank you, Senator Ashford. Going back to what some of the testifiers said on both sides, Mrs. Spieker did call the sheriff to come out on one of these occasions, because it's in the county. The sheriff came out, talked to the two people involved--and actually, there's three of them, but there's two that are in law enforcement that's doing the shooting--and the sheriff came back to Mrs. Spieker and told her, they are not breaking the law. They are not hunting, they're shooting, and so all I can do is mediate. So should Mrs. Spieker and all of her neighbors now, every time that this shooting is going on, call the sheriff and say, I want to report--or however you do it--disturbing the peace, and they continually charge these people with disturbing the peace? Maybe so. Maybe that would get them to quit, because there is a fine and whatever else for disturbing the peace. Each of these constituents, and they all happen to be my constituents, are exercising their rights, and one of you said, and very nicely, that your rights end where someone else's are being infringed upon. One side's rights were to shoot on their own property, because there is no law against it, and the other person has the rights to enjoy their peace in the country. Now since we don't encourage vigilante action, and I would be really surprised if anyone would go over to a neighbor who is in possession of an AK-47 and...well, you can use your imagination from there on, but regulation of the behavior needs to take place. In that case, this bill, LB692, prohibits the shooting of a firearm within 200 yards of an inhabited dwelling, unless you have the permission of the owner of that dwelling, or its on your own property. So if you get permission from all of your neighbors within 200 yards, you're home free. If it's on your own property and you're outside of 200 yards from anyone else's home, you're also home free. Current law prohibits hunting within 200 yards of an inhabited building, without the consent of the owner. Again, you get the consent, you're fine. Another law prohibits the discharge of a weapon at an inhabited building. So drive-by shooting, someone is out on the road and they shoot at your barn and they break the windows, that's a crime. Well, LB692 fills the gap between these two laws. You can't shoot. You can't hunt, so what's the difference between hunting and shooting, within 200 yards? There is a shooting range, and I'm going to say it's definitely within three miles as the crow flies from this area. It's just to the east of Pawnee Lake. Now it might be four, maybe five, but I don't think so, within four of where this shooting is taking place. So if they want to go shoot, go to the shooting range, and they can shoot to their heart's content. Mr. Herrod, whom I really do appreciate his being here, and when I saw him, I thought, uh-oh, I bet he's here for my bill. Hunters should know what they're doing. Hunters have to take a safety course, or at least the younger ones do, and the older ones are assumed to know what they're doing. But they also, when they're hunting,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

wear hunter orange, and that's to prevent some other hunter from shooting at them, thinking they're a deer. There is nothing inherently dangerous about hunting, but when you are in as small an area as we're talking about, a suburban acreage development--you've got children, you've got animals--that changes it. You're not hunting, you're shooting. But you know, a hunting bullet can kill a child just as easily as a shooting bullet can? And if you want to go back and refer to the information from the Game and Parks, just how far those shells can travel, and we're not talking anywhere near the distance--three miles for a .30-06, that's usually used for hunting deer. Mr. Schultz said that he is with the Marksmen's Club and you know, I really should join that club, because my uncle is a black powder shooter. He came out to our farm, got permission. He set up a target, he jammed the stuff in the black powder gun and I says, well, let me try that. Bull's eye, first shot, and he says, that...it just isn't fair. Here you've never shot a black powder gun before, and you hit the target. In my earlier younger days, I was in a bee-bee gun shooting contest. I hit 24 out of 25 targets, bull's-eyes. Now I can't shoot blue rock because they're moving. I can't hit moving things. Right after we came back from our honeymoon--shut me off if I'm getting too long here, Senator Ashford. (Laughter) [LB692]

SENATOR ASHFORD: No, this is very, very good! (Laughter) Those are great stories. [LB692]

SENATOR HUDKINS: Tell you stories here. Right after we got back from our honeymoon, 40-some odd years ago, we had a stray tomcat in our farm, and stray tomcats tend to yowl about five o'clock in the morning, and I asked my husband, is that 22 that's in the closet loaded? He says, well, I don't know. I'll check. So he did and he... [LB692]

SENATOR SCHIMEK: Don't go any further with the story! (Laughter) [LB692]

SENATOR HUDKINS: Anyway, the cat didn't disturb us any more, out of deference to Senator Schimek. And we were out again in our pasture target shooting. I have a 22 pistol, and we threw some pop cans out on the pond, and there was a bunch of pond slime there, and so they floated. My son-in-law says, there's no way you can hit that pop can. Well, I did. And so he said he would never ever argue with his mother-in-law again. Mr. Schultz said that this bill would criminalize self-defense. That was not our intent, and if the committee thinks that there needs to be something written in there to put that in writing so everybody is sure, that's fine. But this bill is not an anti-gun bill. This bill is a safety issue. I guess that's all I need to say. Safety, safety, safety. When you've got kids and animals, you don't have any business shooting a gun within their proximity. Thank you. [LB692]

SENATOR ASHFORD: Thank you, Senator Hudkins. Thank you for sharing your stories. (Laughter) They were good. I believe that ends the hearing. Our last bill today is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

LB695. Senator Christensen. And I know Senator Christensen's son is here today. Has he had a good time back there? Have you had a good time today? Okay. (Laugh)
[LB692]

SENATOR CHRISTENSEN: Except for this part. [LB695]

SENATOR ASHFORD: It's a lot of sitting around, isn't it, sometimes? Yeah. Okay.
[LB695]

SENATOR CHRISTENSEN: He told me it was...is this all you do, is sit around and eat with important people? That was the comment at noon, so. [LB695]

SENATOR ASHFORD: That's all you do. That's about 90 percent of it. Go ahead, Senator Christensen. [LB695]

SENATOR CHRISTENSEN: Thank you. Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, representing the 44th Legislative District. I'm here to introduce LB695. In 2006 the Nebraska Legislature decide its state policy should allow for a law-abiding person who is trained and permitted to carry a concealed handgun under the passage of the Concealed Handgun Permit Act. The intent was that this act should be applied uniformly across the state of Nebraska so that the citizens could confidently exercise the right without unknowingly violating local ordinances. Currently, local firearm ordinances are not consistent in all areas of Nebraska, creating a patchwork of laws and ordinances regarding the possession, transport, and conceal of carry of firearms. This patchwork creates confusion as to what is lawful and unlawful as you travel across the state of Nebraska. LB695 addresses this concern that state policy regarding the basic regulation of firearms is clearly and uniformly applied across Nebraska. This bill would clarify that state firearm statutes with regard to the ownership, possession, transportation, and concealed carry of firearms preempt the enactment of local governmental subdivisions, where the two are in conflict. Specifically, this bill amends statutes 14-102, 15-255, 16-227, and 17-556, which list what may be regulated through ordinance for each different class of city and village. In each section where it grants authorities to cities and villages to either prohibit, punish, or prevent the carry of concealed weapons, an exception is given to clarify that this does not include the carrying of concealed handguns in compliance with the Concealed Handgun Permit Act. In addition, in Section 5 of this bill is new language specifically stating that cities and villages do not have the power to regulate the ownership, possession, or transportation of firearms, except as it is expressly provided by state law. This section also states that any existing ordinances, permits, or regulations regarding the ownership, possession, or transportation of firearms are null and void. LB695 would not apply to local zoning issues such as discharge of firearms within the corporate limits of municipalities. This would continue to be a matter of local determination. This does not affect the state law that prohibits in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

concealed handgun act...this does not affect where state law prohibits them in the concealed handgun act. Is there any questions? [LB695]

SENATOR ASHFORD: Any questions? I don't...Senator Schimek. [LB695]

SENATOR SCHIMEK: Yes. Senator Christensen, I just know if this were on any other subject, you would tell me you believe in local control. [LB695]

SENATOR CHRISTENSEN: Well, what you got to look at, the local control here, if it's a private business, you can still be exempted by this law that was passed, or LB454 last year, by posting a sign. All this is, is providing that as you're transporting through the state...you could be going down Highway 6 or Highway 30,... [LB695]

SENATOR SCHIMEK: I understand your point, but you're trying to take away from the city of Omaha, for instance, the right to decide whether they want concealed carry in their city or not, and it's a lot different in the city of Omaha than it is in the city of Scottsbluff. The conditions are totally different, and if we were talking about anything else, you would tell me you believe in local control. [LB695]

SENATOR CHRISTENSEN: But you still have the local control, as an individual, which is more important than the municipality. And what about...you're going to hurt your own tourism. If people can't even come through and know if they're law-abiding, it's like a helmet law, which has been fought a lot. It's inconsistent, it's difficult. You're going to force people around. It's important. [LB695]

SENATOR SCHIMEK: Senator, I don't think you really answered by question, but thank you anyway. (Laugh) [LB695]

SENATOR ASHFORD: We're...let me...any other questions of Senator Christensen? Let me...thanks, Senator Christensen. Do you care to close? I suppose you want to... [LB695]

SENATOR CHRISTENSEN: Yeah, I'll reserve the right. [LB695]

SENATOR ASHFORD: Right, reserve that right. How many proponents do we have? How many opponents? Okay, I notice there are some city people. It might be helpful if you're saying the same thing, that you try to keep your testimony short if you're on the same topic. We're on the same topic, but if your points are the same, if you could try to keep that in mind. Let's start with the proponents, then. [LB695]

JORDAN AUSTIN: (Exhibit) Good afternoon, Chairman Ashford, members of the committee. My name is Jordan Austin, A-u-s-t-i-n, and I'm here today on behalf of the National Rifle Association of America. I'm a registered lobbyist appearing before you in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

support of LB695. The purpose of this bill is to establish a statewide preemption on local firearms ordinances with regard to their ownership, possession, transportation, and right to carry a concealed firearm. Preemption laws prevent local jurisdictions from imposing ordinances in variance with laws passed by the state legislature and in some cases, rescind local ordinances to ensure uniform laws statewide. The current situation in Nebraska results in a complex patchwork of restrictions that change from one local jurisdiction to the next. It is unreasonable to require citizens, whether residents of Nebraska or a person passing through or visiting this state, to memorize a myriad of laws. When a situation such as this is present, law-abiding citizens run the risk of violating ordinances and restrictions they don't even know exist. This can affect hunters, target shooters, and firearms collectors who travel through multiple jurisdictions on the way to hunting areas, shooting ranges, and exhibitions. Individuals who travel with firearms for personal protection are also at risk of breaking the law, simply by crossing from one jurisdiction to another. If charged with a violation of local ordinance, the honest gun owner faces, at the very least, great expense and devotion of time in clearing his or her good name in court and retrieving any firearms or other property confiscated by law enforcement officials. Nebraska is not a test case for this type of legislation. In fact, to prevent the problems associated with restrictive local ordinances, 47 states have enacted firearms preemption laws. Preemption legislation is also not new to Nebraska. In fact, in just doing a simple search, I was able to discover several sections of Nebraska code where various aspects of state law preempt local law. The issue of firearms regulation with regard to the aforementioned provisions is one of statewide importance. It is also an issue that is deserving of uniform state laws to protect law-abiding citizens. In studying the local ordinances of various cities in Nebraska, I noticed many differences in how each locality has handled issues such as concealed carry, transportation, and even possession. One city in Nebraska has even added offenses to their list of misdemeanors that would prevent one from possessing a firearm. Someone who is a law-abiding citizen in every city in Nebraska all of a sudden becomes a criminal when they entered that city's jurisdiction. That type of, as I said before, patchwork legislation is unfair to the ordinary citizen to memorize. Someone who lives in the western part of the state might not have been aware such an ordinance had passed. Now that citizen could potentially run afoul of violations and restrictions that only exist in that locality. The core of the argument for preemption is state versus local control. As an organization the NRA is not against local municipalities deciding what is best for them. This bill would not affect local issues, as mentioned before, such as discharging a firearm, although an issue as important as firearms regulations with regard to transportation, possession, ownership, and a citizen's right to carry concealed affect so many citizens statewide that it deserves statewide regulation and conformity. Nebraska is a large state with vast expanses of hunting lands, multiple shooting ranges, and frequent gun shows. Firearms owners, shooters, and collectors do a considerable amount of traveling across this great state to hunt, visit, and attend these various events. These folks deserve the uniformity that LB695 will provide for them. I want to thank you for your time today, and I urge the committee to vote to move LB695 out of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

committee and on to General File. I'd be happy to answer any questions you might have at this time. [LB695]

SENATOR ASHFORD: Any questions of Jordan? Thanks, Jordan. [LB695]

MARK BOHATY: (Exhibit) Mr. Chairman, members of the committee, good afternoon. I'm Mark Bohaty, retired Nebraska State Patrol, 25 years, 4 years traffic enforcement, 21 years in the firearms examination section of the crime laboratory. As I said, I'm retired presently. My wife and I own Great Plains Rifle Works Company, near Bruno, Nebraska. We are also certified instructors for the Nebraska concealed-carry permit. What I want to talk about is what was mentioned just briefly here by Jordan, LB695 that deals with firearms preemption. I'm speaking to you from the point of view of a law enforcement officer in the past and being a certified instructor presently. We have instructed approximately 135 Nebraskans who have passed the course and have applied, and some have received their permit. Right now it is a patchwork of laws that creating a bit of a nuisance and a confusion among our citizens who are attending our courses and applying for their permit. Equally frustrating is it going to be for a little bit of the law enforcement community, too, and if they're going to find themselves detaining and possibly arresting Nebraskans who weren't even aware that they were violating an ordinance within their city. Individuals that come to our class are given a list of the towns within Nebraska that currently have carry concealed ban. I decided to call those agencies and visit with them a little bit about what they prefer with regards to these citizens who have a carry conceal and are going to cross through their jurisdiction. It was interesting, in that many would prefer that the gun not be put on the dash in plain sight. The citizens didn't want to create a concern, nor do the officers, with people traveling around with guns on their dash or on plain view on the seat. The majority really preferred--these are the law enforcement agencies--preferred that the gun be encased and placed in a secure area, out of control. Another agency did want it on the dash, and yet another one thought it would be good to have it unloaded, ammunition locked in the glovebox, the firearm secured in the trunk or elsewhere. Now at every class I'm asked this very question by everybody that takes it: What do we do, and how do we know what to do when we cross into another jurisdiction or a city that has a ban? I try to give them the best scenario. It's got to be out of reach, if it's not visible, or it needs to be laid on the dash or the seat. Now there's an issue in a pickup truck that doesn't have a trunk. Where are they going to put it? What we don't want to do is put people in the position of having to get out of their car before they cross over into Holdrege, Nebraska, pop the trunk and be putting their gun away before they go through the city. This bill wouldn't change anything with regards to what has been placed...put in place now. They still can't carry it in numerous, numerous places, and businesses can obviously still post, but at least they can pass through the community and feel confident that they're not going to be violating a law by having a concealed weapon stored therein. So I see my time is up. What I want to do is, I want to thank you for your time today, and I want to encourage each and every member to please vote to move LB695 out of committee and into

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

General File. This is coming from an instructor and previous law enforcement officer.
[LB695]

SENATOR ASHFORD: Any questions of Mark? I'm not going to...I don't want belabor this point, but I'm just...I have to say it. I recall years ago, when we did the permit to purchase law, which happened to be my proposal and it did eventually pass, and I recall the NRA opposing it as a statewide measure. And I understand what you're saying, and I don't necessarily oppose what you're saying, but I...one of the amendments that we had at that time to the bill was to provide, before you get a first-time permit, you could file an affidavit to show that you had had years of experience as a...owning a gun and firing a gun, or you would have to take some kind of a course. And the NRA had...I think they had an Eagle course for young people. But then there were other courses that law enforcement offered, and that was opposed by the NRA. Now I only say that for historical perspective, is that at that time, we were looking...what my...what I was trying to do at that time was to keep guns out of the hands of felons, and the only way I could think of doing it was by having a background check and making sure that person wasn't a felon. And the NRA...and I respect what the NRA is doing, especially in the area of instruction, because I think it's exceedingly valuable, and so...and just for the record, I...part of the argument was Brad, you really can't have a law that applies statewide, that says everybody has to have a permit to purchase. And now, we're kind of saying (laugh)...I'm not trying to catch you here,... [LB695]

MARK BOHATY: No. [LB695]

SENATOR ASHFORD: ...but I just...just for the record, because really, that's all we were trying to do there, was to have a statewide sort of a standard that said before...and you'd thought I had proposed a law that would...you know, violating the Second Amendment at best, and Communist infiltration of my office at worst. So...but I say this with all respect to what you're doing, and I think the instruction is absolutely incredibly valuable, and I know you're trying to do the right thing. But I just...just for the record I wanted to put that out there. I won't say it again (laugh), okay? [LB695]

MARK BOHATY: Thank you. Any other questions? Okay. [LB695]

BILL SCHULTZ: Good afternoon once more. Again, my name, Bill Schultz, S-c-h-u-l-t-z. I do live in District 12 and represent the Nebraska Marksmanship Association and the Eastern Nebraska Gun Club. [LB695]

SENATOR ASHFORD: Thanks, Bill. Thank you for your testimony. Any further proponents? Whoops, we've got two. [LB695]

WALTER KAMP: When I want her, where's the little gal? [LB695]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Uh-oh. There's a gentleman. I don't know where the gal is (laugh). But... [LB695]

WALTER KAMP: (Exhibit) Good afternoon. My name is Walt Kamp. I'm from Kearney, Nebraska, and I live a mile west of town. We ran into a buzz saw out there this last summer. I went to ask the city council there this summer about, are they going to change their ordinance in Kearney which says that they can't carry concealed in the city limits. They have a whole list of types of weapons they won't let you carry. And they had a very spirited and lively city council session that was full of the kind of fear and paranoia Senator Chambers was talking about earlier today. And just to wrap it up, what they said was that...they dredged up all the old arguments, the old mythologies that...about Dodge City and shoot-outs after fender benders, and stuff like that, and all kinds of dire and gloomy predictions were made. A lot of supporters showed up to cite facts and statistics, but they didn't want to listen to them. At least one of those councilmen said they didn't want to listen. He said he didn't believe in statistics. He said liars lie, and so do statistics, he said. The police chief was quoted as saying he was uneasy about the law. He said it would make things hard for their officers, and they asked the city attorney there in Kearney what was the definition in Section 7, Paragraph 5, of a mentally ill and dangerous person. They wanted more clarification about that. It just...they came across at the end as that they just didn't like the law. They said that they felt that LB454 was flawed and poorly written, and they wanted to see some changes. One of the councilmen actually said that he would prefer to try to maintain the appearance of local control, and so the reason I'm here to support LB695 is that I feel that preemption in LB454 or something like LB695, which would say that those of us who get a concealed handgun carry permit--and by the way, I'm taking my training tomorrow in Grand Island, and when I'm done I'll be licensed to carry in 29 states. Something like LB695 will let those of us who have the permit have the...basically an affirmative defense to the charge of carrying concealed in that city. You know, it's already against the law in Kearney to carry concealed. Those of us who live there don't do it. But now, with the permit, if the city would change their mind about it, we could carry concealed. We're just as good a person today as they'll be tomorrow. So that's all I can say. I don't want to have to rely on the kindness of criminals. Thank you very much. [LB695]

SENATOR LATHROP: Thank you. Any questions for this witness? All right. Thank you very much. [LB695]

TERRENCE BEGLEY: Good afternoon. My name is Terry Begley, B-e-g-l-e-y. I live in Omaha. I work at Creighton University. I am the match director for the Eastern Nebraska Practical Shooters. We shoot at the Eastern Nebraska Gun Club, and I am a permit holder, have my concealed handgun permit. I'm here today to speak on LB695. I am concerned about carrying concealed or having it in my vehicle concealed as I travel. The current patchwork of laws makes it difficult to comply with the law. As a gun owner,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

I could be traveling from Omaha, say, across the interstate, the western part of the state, to visit relatives, and unknowingly violate local ordinances. I could be stopping, say, at York, Nebraska, at the truck stop there off the interstate, and they might have an ordinance against concealed handguns, and I might now know that, because they change all the time, and I can't keep up on that. Even in the Omaha metropolitan area there's a patchwork of ordinances. If I am at 84th and L Street, traveling south, within minutes I am in different jurisdictions--in Ralston, La Vista, Bellevue, Papillion, etcetera--and each city could have their own regulations and I could be in violation of that, depending on whether I turn left or right. My favorite example I like to point out is the city of Bellevue. They have a law that prevents transporting firearms into the city or through the city, between 10 p.m. and 7 a.m. the following day. So if I was in Bellevue past 10 p.m., with my handgun and was stopped for whatever reason--the DUI checkpoint or whatever--I would have to declare I have a permit and declare my firearm to the law enforcement officer, and then I would be in violation of the 10 p.m. to 7 a.m. ordinance. I know about that now, and I learned about that in my concealed-carry class, but what if you took a different class from another instructor, or you were from the western part of the state, that did not know that? I am asking that you advance LB695. It makes sense to have a uniform set of laws for the state, one set of laws that could be taught to everyone in the concealed-carry class in that law that they learn. Other states have also done this recently, such as Ohio. Thank you. I'd be glad to answer any questions that you have. [LB695]

SENATOR LATHROP: Any questions for Mr. Begley? Okay, thanks for coming down. [LB695]

TERRENCE BEGLEY: Okay, thank you. [LB695]

SENATOR LATHROP: Any other proponents? How about opponents? Good afternoon. [LB695]

JIM PESCHONG: Good afternoon. Senators, members of the Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I'm the assistant chief of police for the city of Lincoln. I'm here to testify in opposition of LB695. The current state statutes has loopholes by allowing individuals to obtain concealed weapons permits, even if they have been convicted of serious misdemeanor crimes such as stalking, violating a protection order, impersonating a police officer, and indecent exposure. The city of Lincoln passed a city ordinance last summer, prohibiting people who have been convicted of these crimes from carrying a concealed weapon in the city. Several other cities in Nebraska have also passed ordinances. Lincoln's ordinance does not totally restrict the ability to carry a concealed handgun, but it does add several categories of offenders who, if issued permits, could use a weapon in the pursuit of their chosen crime. Lincoln's domestic violence group support the current city ordinance. With over 800 Lancaster County protection orders issued each year, the ability to restrict those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

people convicted of stalking or convicted of violations of protection orders is important. We understand the concerns of the Legislature and the senators, but we feel that it is important that cities retain their ability to pass ordinances in the best interest of their community, as well. This bill may be well suited for a potential interim study, which would include the effectiveness of the state statute and the local ordinances. The Police Chiefs of Nebraska and the Police Officers Association of Nebraska also oppose this bill. Thank you for your consideration of this matter, and if you have any questions, I'll be happy to try to answer those. [LB695]

SENATOR ASHFORD: Thanks, Chief. [LB695]

JIM PESCHONG: Okay. [LB695]

SENATOR ASHFORD: Thank you, Chief. [LB695]

JIM PESCHONG: You're welcome. [LB695]

WILLIAM L. MIZNER: Good afternoon. My name is Bill Mizner, that's M-i-z-n-e-r. I'm the police chief in Norfolk, Nebraska, and I am here to speak in opposition to LB695. I've listened with interest to some of the discussion today, and primarily my concern is the issue of local control as well as community safety. As police chief in Norfolk, my primary concern is for the safety of our citizens. I think that this is an issue that is probably best served by allowing those citizens and their municipal elected officials to make a determination on something like this, as far as their jurisdiction goes. I've had discussions with other individuals, and our intent in Norfolk is not to create violators out of people who have a lawful permit. If someone is passing through our community and they happen to commit a violation and we would stop them, if they show us their permit we would not want to cite them. We'd want to use it as an educational opportunity to tell them that we have an ordinance that doesn't allow carry of concealed weapons and then let them move on. One of the things that could be addressed here, that could meet some of the concerns I've heard today, as well as the concerns about local control, would be to make a similar provision that exists right now in that original statutes, whereby if they are traveling through the community but not stopping to conduct business or anything like that, having the concealed weapon in their vehicle would not be a violation. There's a similar thing that's mentioned in there about, if you have that permit and you're in your vehicle but you're on property that's been posted, it's not a violation, as long as you leave that weapon secured in your vehicle when you exit that vehicle. That would certainly meet our concerns. Our concerns are basically the day-to-day activities by those people who live and work in our communities, not those people who live in other communities and just happen to be passing through. It also seems interesting to me the list of prohibitions that are listed in the bill. You look at hospitals and places of worship, you look at governmental buildings where you have courthouses, you look at a number of these prohibitions. If there's not legitimate concern

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

on the base of the local individuals to be able to make this decision, and it's not a big deal to have anybody come through with...that has a permit and a concealed weapon, why are we so concerned about not allowing those people to come in there? I note with interest that they can't come into this meeting by state law, because they're not allowed, and obviously, there must be some concerns there. I'm not saying that that should change. I'm just saying, if it's good for all of these other places and there's concerns listed there, that they don't want these people to come in, regardless of how well they're trained or how good a person they are, or whether they have their permit or not, then maybe it should be good enough for those communities that have decided that they also would like to maintain their prohibition. Those ordinances that have been changed because communities wanted to change them, they've been done. Those cities that don't want to do that have not taken any action. That seems to me the way that that legislative process at the local level is supposed to work--respond to the concerns of your citizens and then take action. Some communities have, some communities haven't. It appears to be working according to the needs of those citizens, and I would encourage you to not advance this bill from the committee, and allow that process to still continue to work. I thank you for listening to me, and I'd be glad to answer any questions that you might have. [LB695]

SENATOR ASHFORD: Thanks, Chief. Any questions? Thank you. [LB695]

WILLIAM L. MIZNER: Thank you. [LB695]

GARY KRUMLAND: Senator Ashford and members of the committee, my name is Gary Krumland. It's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in opposition to the bill. We do believe in local control. We think this is a very important issue, that local officials need to have a say to help their citizens, for purposes of safety. And I guess I won't go into detail, but we do oppose the bill. There are ways, I think, we can take care of some of the concerns, as Chief Mizner mentioned, about people (inaudible) through. We could probably formalize a little bit the notification of people who have Nebraska permits on what cities have ordinances than are different than state law, but we do think that it's local elected officials who need to have the opportunity and retain the authority to adopt local ordinances on concealed handguns. [LB695]

SENATOR ASHFORD: Gary, just very briefly and just very quickly, do you know how many communities have laws that are different than... [LB695]

GARY KRUMLAND: No, I... [LB695]

SENATOR ASHFORD: Can you get me that information? [LB695]

GARY KRUMLAND: Yeah, we can try and find that for you. [LB695]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR ASHFORD: Thank you. Thanks very much. Jack. Any other opponents?
[LB695]

JACK CHELOHA: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Jack Cheloha; the last name spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha, testifying in opposition to LB695. The city of Omaha this past summer adopted an ordinance basically that mirrors LB454 and allows for concealed carry. However, I'm here today because of the local control issue. The city of Omaha vigorously fights and defends the right to have local control on any number of bills. This bill is no exception, and for that reason, I'm here today, and I'll try to answer any questions. [LB695]

SENATOR ASHFORD: Just one quick question. Here's my problem with all this local control versus state. One example that comes right to mind--what would happen if we passed the law, the bill on hospitals and University of Nebraska at Omaha, for example, on the...would that...what would you do there? I mean, would you suggest that that not apply, or would you have...then would the city council then, I suppose, pass an ordinance that would include the universities? I just... [LB695]

JACK CHELOHA: Well, you can have exceptions within exceptions, I guess. [LB695]

SENATOR ASHFORD: Well, I mean, would the city council have to pass...I mean, if we allow cities to pass their own ordinances on the subject, what would happen when we change the law? [LB695]

JACK CHELOHA: Well, I think on ours, it necessarily wouldn't affect us, because we basically say we'll implement as state law allows for the concealed carry,... [LB695]

SENATOR ASHFORD: Oh, okay. [LB695]

JACK CHELOHA: ...so for us, we wouldn't have to go back in and change our ordinance. [LB695]

SENATOR ASHFORD: Okay. That was the only question I had. [LB695]

JACK CHELOHA: Right, okay. [LB695]

SENATOR ASHFORD: I don't want to belabor the point. I just...thanks, Jack. [LB695]

JACK CHELOHA: Thank you. [LB695]

SENATOR ASHFORD: Senator Christensen, do you wish to... [LB695]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

SENATOR CHRISTENSEN: Again, I'd just like to thank you for consideration of this bill. I'd just like to clarify the passage through the state, and the rights to carry that concealed weapon. I'd just like to ask for your passage of this into General File. Thank you. [LB695]

SENATOR ASHFORD: Thanks. Thank you, Senator Christensen. Thank you all. That concludes the hearing. [LB695]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 02, 2007

Disposition of Bills:

LB81 - Indefinitely postponed.
LB138 - Held in committee.
LB143 - Advanced to General File.
LB491 - Advanced to General File, as amended.
LB692 - Advanced to General File.
LB695 - Indefinitely postponed.

Chairperson

Committee Clerk