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Transcriber's Office

Judiciary Committee
January 30, 2008

[LB735 LB840 LB902 LB930 LB957]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 30, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB930, LB957, LB735, LB902 and LB840. 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: Why don't we get started? We're a little late but not too bad. Welcome to the Judiciary Committee. My name is Brad Ashford, I'm Chair of the committee. And we have Senator Dwite Pedersen here from Elkhorn, Steve Lathrop from Omaha, Amanda McGill from Lincoln. And who else is here? Vickie McDonald from St. Paul (laugh) and Pete Pirsch from Omaha. And Jonathan Bradford is the committee clerk and Stacey Trout is legal counsel. So those of you who have been...and Senator Chambers. Excuse me, Senator Chambers. (Laughter) And I just hardly...well, of course doesn't need introduction. But we have...those of you who have not testified in here before know that there's a light system that we'll ask you to follow. There's a yellow light that tells you when we'd ask you to sum up, and then a red light which ejects you from your seat. (Laughter) But not really, I'm just kidding. We have five bills today and Senator Cornett has...you always have the first bill, I don't know how you're able to always get that done. But Senator Cornett is here to introduce the first bill, which is LB930. [LB930]

SENATOR CORNETT: (Exhibit 1) Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Abbie Cornett and I represent the 45th Legislative District. I'm here to introduce LB930, which addresses Statute 83-174.02. This statute deals with the evaluation of a dangerous sex offender prior to their release. Currently the statute requires a mental health professional to fill out an affidavit as to whether or not a person was a dangerous sex offender. LB930 adds the language to have the mental health professional give his or her opinion as to what type of treatment the person should receive. I have an amendment I would like to provide to the committee which better defines the language for a mental health provider. I believe that there is a testifier following me that would be able to answer the more technical aspects of this bill. I want to thank you for your time and consideration of LB930, and I will try to answer any questions if you have any. [LB930]

SENATOR ASHFORD: Okay. Any questions of Senator Cornett? Thanks, Abbie. Do you... [LB930]

SENATOR CORNETT: I'm going to waive closing. Thank you very much. [LB930]

SENATOR ASHFORD: Okay. Thank you. How many testifiers do we have on LB930,

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pro and con? Just a few? All right. We'll take the proponent testimony first. And come on up and give us your name and... [LB930]

NICOLE O'KEEFE: Hi, my name is Nicole O'Keefe. I work with the Sarpy County Attorney's Office. [LB930]

SENATOR ASHFORD: O'Keefe, is that right? [LB930]

NICOLE O'KEEFE: (Exhibit 2) Yes. And I do have a summary of my statement written if the... [LB930]

SENATOR ASHFORD: Kitty, where's your... [LB930]

KITTY KEARNS: They're both making copies. [LB930]

SENATOR ASHFORD: Oh, okay. (Laughter) What are you doing here? We have the head of the whole place here today doing this. So we're very fortunate. Thanks, Kitty. [LB930]

NICOLE O'KEEFE: I'll just go over the highlights of my summary. Basically, the Sex Offender Commitment Act has a burden of proof which requires that I prove that the subject is a dangerous sex offender as defined under the statute and I'm required to prove the appropriate level of treatment and show that that treatment is the least restrictive treatment alternative. The reports from the Department of Corrections, they do give an opinion on whether the subject is a dangerous sex offender and it includes information with risk factors and social and sexual history and things of that nature. But it does not give an opinion with regards to appropriate treatment level. So on those reports, it would show the subject to be a dangerous sex offender. The net result is that I'm required...or rather the county would need to go get a second opinion to let us know what appropriate treatment would be, since that is what I'm required to prove. Now in speaking with the doctors at the Department of Corrections, they've indicated that the reason they do not want to give an opinion on treatment is because they felt that they would need to know all of the treatment options available within every community. And that's just not a reasonable thing for them to do. With this new language that was just recently passed out, it's thought that the doctors could give an opinion on the treatment using their current evaluation techniques which require...the evaluation techniques, they take a look at the risk factors and also treatment-interfering behaviors. [LB930]

SENATOR ASHFORD: Nicole, could you just speak up a little bit? We're having some difficulty. [LB930]

NICOLE O'KEEFE: Oh, sure. [LB930]

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SENATOR ASHFORD: And I think it's...the mike is the problem. So just lean in just a bit. Thanks. [LB930]

NICOLE O'KEEFE: Can you hear me now? [LB930]

SENATOR ASHFORD: I think it's better. [LB930]

NICOLE O'KEEFE: Okay. Is there anything that anyone needs me to repeat from what I just said? I'm almost done, quite honestly. [LB930]

SENATOR ASHFORD: Just finish up and then we'll have some questions probably for you. [LB930]

NICOLE O'KEEFE: Okay. Basically, the new language that was just passed out would require that the doctors give an opinion on treatment using their current evaluation techniques, the risk factors and the treatment-interfering behaviors. That way they wouldn't have to know all the treatment programs that are available. And it's thought that, you know, it's a good place for them to start; for us to start, I guess. And that's all I have to say. [LB930]

SENATOR ASHFORD: Any questions of Nicole? I don't believe so. It was clear enough. Thank you. [LB930]

NICOLE O'KEEFE: Oh, great. Thank you very much. [LB930]

SENATOR ASHFORD: Thank you very much. Any further proponent testimony? Opponents? Opponents? Okay, the Department of Corrections is here. Not the whole department, but you. Good afternoon. [LB930]

CAMERON WHITE: (Exhibit 3) Good afternoon, members of the Judiciary Committee. My name is Cameron White, W-h-i-t-e. I'm the behavioral health administrator for the Department of Correctional Services. I appear before you today to respectfully oppose the provisions of LB930. As you are aware, LB930 amends LB1199 from 2006. My division has been involved in the implementation of LB1199. The Department of Corrections had 152 sex offenders discharged in calendar year 2007. NDCS staff performed 77 evaluations and affidavits in calendar year 2007. Of those evaluations, 18 individuals were found to be dangerous sex offenders. Our agency evaluators have not included a treatment plan as part of the evaluation, as that was not asked for in the original law. However, we include both static and dynamic risk factors in our evaluations. Testimony regarding these risk factors has generally provided the mental health boards assistance in making the decisions they are responsible for, such as dangerousness, least restrictive treatment, and other treatment planning issues. NDCS feels that we have been able to address concerns that the counties have had with

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implementing the law since the passage of LB1199 in 2006. A mental health board hearing that determines commitment for a dangerous sex offender involves a different process than a standard mental health board hearing, and NDCS staff has spent a significant amount of time educating about these issues. Our staff will continue to work with all parties, including counties, to ensure that we're doing appropriate evaluations and that our testimony appropriately reflects the evaluation results. Providing treatment components as proposed in LB930 would increase the complexity of the evaluation process. We feel that the evaluation is not the most appropriate venue for determining the components of treatment, as NDCS does not make the ultimate determination of dangerousness. That is the mental health board's decision. Treatment planning should flow from that decision and not come before it. Should NDCS be required to provide that type of recommendation, it would be most appropriate for it to be done as part of a comprehensive discharge planning process. As indicated in our fiscal note, NDCS would need three social workers to complete such discharge planning with all sex offenders. Preparation of an offender's discharge plan will provide an evaluator a better understanding of an evaluator's level of risk and needs. It may also indicate the viability of the proposed treatment plan. Again, I'm pleased to have the opportunity to discuss this issue before the committee and I'd be willing to take any questions that you may have at this time. Thank you. [LB930]

SENATOR ASHFORD: Any questions? Yes, Senator Pedersen. [LB930]

SENATOR PEDERSEN: Dr. White, you are a doctor, is that right, Ph.D.? [LB930]

CAMERON WHITE: I'm a licensed psychologist, yes, clinical psychologist. [LB930]

SENATOR PEDERSEN: Are you aware, do we have any...how many people do we have in the state at your level of education that have experience and are working with sex offenders? [LB930]

CAMERON WHITE: Senator Pedersen, I don't have specific numbers on that. I know within the Department of Corrections we have several specialists. We have at least three doctoral level staff who work on these issues pretty much exclusively. [LB930]

SENATOR PEDERSEN: Okay. And these people, what they're looking for here, what they want, if I read this right, is they want you to put down a level of treatment to refer them to when they get out. [LB930]

CAMERON WHITE: Yes, that's correct. [LB930]

SENATOR PEDERSEN: Now if they don't need any treatment, they'd be happy with that, too; say no treatment needed. [LB930]

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CAMERON WHITE: Yes. The recommendations are based on the individual case. [LB930]

SENATOR PEDERSEN: And if you made the recommendation no treatment needed and the person went out and reoffended, would you be open for...liable? [LB930]

CAMERON WHITE: I don't really have the answer to that. [LB930]

SENATOR PEDERSEN: I mean, I'm wondering what's bringing this forward. We don't have good sex offender treatment in this state except in Department of Corrections, that I know of. I mean, on a broad band, there's a few people that do it and it's spread thin. I've tried to change that. And then we've got a lot of people who are doing the treatment who are not qualified. I mean, they get their LMHP and they hang their shingle up and call themselves a sex offender provider, give them treatment, and they don't have any of that...and that scares me. So this bothers me that if you did put it down there, whether they would go anyway. So thank you for being here today, Doctor. [LB930]

CAMERON WHITE: You're welcome. [LB930]

SENATOR ASHFORD: Yeah, Senator Pirsch. [LB930]

SENATOR PIRSCH: And thank you for appearing here today on my behalf, as well. If I could just ask a little bit of background information--which I certainly would find helpful, maybe the other members of the committee would, too--with respect to the paradigm that was created in 2006. Obviously I wasn't on this committee at that time. But if I understand it, right now the burden is...not the burden but the duty with respect to certain of these criminals who have been convicted of committing sex crimes, it would be the Department of Corrections, the duty to determine which among those...that universe is considered dangerous. Is that correct? [LB930]

CAMERON WHITE: Yes, Senator Pirsch. As specified in LB1199, the Department of Corrections is required to provide evaluations to make determinations and recommendations in an affidavit about whether an individual is a dangerous sex offender. And the criteria and prongs for that are listed in the bill. That replaced or, I guess, augmented really what we have in place, mentally ill and dangerous. So this essentially puts another category for civil commitment, or another standard for that. [LB930]

SENATOR PIRSCH: Okay. And you said that the Department of Corrections' experience is that last year 152 sex offenders were discharged. That was in 2007. And of that universe, then 18 were determined to be, quote unquote, dangerous or defined as dangerous per the department. Is that correct? [LB930]

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CAMERON WHITE: That's correct. There were 18 dangerous sex offenders per the standards set out. [LB930]

SENATOR PIRSCH: Okay. And then the next step in the process then typically what would happen now is that those dangerous...those deemed dangerous by the Department of Corrections would then be referred or custody would go over and the Board of Mental Health would make the determination that is being requested to be transferred to the Department of Corrections through this bill. Is that correct? [LB930]

CAMERON WHITE: What happens is after we do those evaluations, it gets sent to three parties: the county of sentencing, the county of incarceration, and the Attorney General's Office. So then mental health boards' proceedings are essentially initiated in these cases and those procedures are followed. [LB930]

SENATOR PIRSCH: Okay. And with respect to those deemed dangerous then, who is currently determining what appropriate treatment it is for these individuals? [LB930]

CAMERON WHITE: The mental health board. [LB930]

SENATOR PIRSCH: Okay. Thanks for clarifying. [LB930]

CAMERON WHITE: You're welcome. [LB930]

SENATOR ASHFORD: Any questions of Dr. White? Thanks, Doctor. [LB930]

CAMERON WHITE: Thank you. [LB930]

SENATOR ASHFORD: Any other opponents of LB930? Okay. That concludes the hearing. Next is LB735 and that, I believe, is Senator Fulton. Is that correct? I believe so, yes. (Recorder malfunction) How many proponents do we have for that one, three? Give it a few more...a minute or so, and then we'll kill it without a hearing. I don't know if that's ever been done. I suppose it has. I think we'll go ahead and do LB957, which is my bill actually. So, Senator Lathrop... [LB957]

SENATOR ASHFORD: Good afternoon, members of the Judiciary Committee. My name is Brad Ashford and I represent the 20th Legislative District and I am here today to present LB957. LB957 has been introduced in order to bring the Nebraska Sex Offender Registration Act into compliance with sex offender registration provisions in the federal Adam Walsh Child Protection and Safety Act of 2006. And like many of these types of bills, the act requires certain changes in state law in order to fully take advantage of the Byrne Justice Assistance Grant funding for the state and local law enforcement efforts to combat violent crimes and narcotics. Currently the state of Nebraska receives \$1.8 million in Byrne funds. LB957 makes the following changes to

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current law, and I'll go through them briefly. There's six changes. One, the sex offenders would be required to register for a length of time based on the conviction they received rather than the outcome of risk assessment. Two, this bill expands the list of offenses that prompt required registration to include incest, unlawful intrusion, sexually related child abuse offenses, sexual assault of an inmate or protected adult. Three, the list of information to be collected at the time of registration is expanded to include all employment and vehicle information, travel and immigration documents, information on all professional licenses, computer and Internet identifiers and addresses, cell phone numbers, so forth and so on. Four, registrants would be required to verify personal information in person based on the period of time they are required to register; 15-year registrants must verify annually, 25-year registrants verify...would be required to verify every 6 months, and lifetime registrants would be required to verify every 3 months. The initial registration must be made with the State Patrol within three working days. And six, offenders who fail to properly register would be subject to arrest. Obviously this tightens many of the requirements for these individuals in our system. And again, like many...like bills where we are requested or mandated to make changes by federal law, that is the reason for the offering of this bill. Thank you. [LB957]

SENATOR LATHROP: Thank you, Senator Ashford. Questions? Senator Chambers. [LB957]

SENATOR ASHFORD: And I need to get the green copy, Senator Chambers. [LB957]

SENATOR CHAMBERS: You don't need it. Were it not for the threat of withholding federal funds, this bill would not be before us, would it? [LB957]

SENATOR ASHFORD: That's correct. Yeah. [LB957]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB957]

SENATOR LATHROP: Any other questions? Thank you, Senator. Proponents of this bill? Please come forward. [LB957]

BRYAN TUMA: (Exhibit 4) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Colonel Bryan Tuma, B-r-y-a-n T-u-m-a, and I serve as the superintendent for the Nebraska State Patrol. I appear before you today in support of LB957 and I want to thank Senator Ashford for sponsoring this bill on behalf of the Nebraska State Patrol. The Nebraska State Patrol is the agency tasked with maintaining the statewide sex offender registry. In 2006, Congress passed and the President signed into law the Adam Walsh Child Protection and Safety Act of 2006. The act's primary goal is to set consistent minimum registration and notification standards for all states and to create a comprehensive national sex offender registry. Jurisdictions who do not substantially comply with the Adam Walsh Act by July 27, 2009, will face

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mandatory 10 percent reductions in Byrne Justice Assistance Grant funding. In accordance with the Adam Walsh Act, LB957 mandates registration length and registry information verification requirements based on crime of conviction. This is a significant departure from current law which requires the assessment of risk. Under LB957, offenders convicted of offenses that are not punishable by more than 1 year imprisonment would be required to register for 15 years and verify registration information annually. Individuals convicted of offenses punishable by more than 1 year imprisonment would be registered for 25 years and verify information every 6 months. Lifetime registration would apply to those persons who have prior sex offense convictions who are lifetime registrants in another jurisdiction and/or who have been convicted of aggravated offenses. This registrants would complete verification every three months. Types of information collected upon original registration and required to be updated has also been expanded to comply with federal legislation. This includes residency, employment and vehicle information, cell phone, computer/Internet identifiers and addresses, professional license information, immigration travel documents, digital fingerprints and palm prints, digital photographs, and DNA samples. All the above registration data and any address, school attendance, or employment changes must be reported within three working days. This information must then be electronically forwarded to the national sex offender registry immediately. The responsibility of accepting initial registrations would be assumed by the State Patrol and completed at one of six State Patrol facilities where equipment for digital fingerprints, palm prints, and photographs already exist. Locations would be Omaha, Lincoln, Norfolk, Grand Island, North Platte, and Scottsbluff. However, verification would continue to occur at the local level. The Adam Walsh Act emphasizes the interaction of local law enforcement with registrants and to facilitate regular face-to-face encounters with local law enforcement. The proposal will have verification and status changes occurring at the county sheriff level. Status changes would require registrants to appear in person within three working days at the county sheriff's office. To comply with the Adam Walsh Act, local agencies will be required to electronically forward any status changes and/or verification information the same day. To facilitate this requirement, the Adam Walsh Act directs the U.S. Attorney General to develop and support registry management and Web site software to law enforcement by July of 2008. Contact with the Department of Justice has revealed that the software will allow for the sharing of information between law enforcement agencies and between the agencies and the national database, and that the software will be provided without charge. In order to be compatible, Internet accessibility and a computer will be required. The State Patrol will maintain responsibility for the Nebraska sex offender registry, submission of updates to the national registry, and updates to the public Web site for community notification. The public will have access to information on all registrants, though not all information on registrants will be public information. In accordance with the Adam Walsh Act, LB957 will apply to all convicted sex offenders, including those whose convictions predate the enactment of the sex offender registry. Practically speaking, it would be very difficult for jurisdictions to identify all previous sex offenders. To accommodate this condition,

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substantial compliance can be achieved by registering three groups of offenders: those incarcerated or under supervision, those already registered or subject to a preexisting sex offender registration, and those who reenter the criminal justice system due to a conviction for some other crime. Because the Adam Walsh Act requires the tier of sex offenders based on conviction rather than the current system based on the assessment of risk, LB957 will necessitate the realignment of State Patrol personnel duties. Two research analysts and a psychology director will be eliminated. However, the agency will need to increase the number of records technicians by six FTE's to provide for a technician in each location to process original registration. This personnel realignment can be accomplished within the current appropriation. The safety of Nebraska citizens is a primary goal of the Nebraska State Patrol. LB957 makes more information on registered sex offenders available to law enforcement personnel, the public within the state, and nationwide. It requires quicker reporting and dissemination of information and provides a more comprehensive set of minimum standards for registration. LB957 addresses requirements as set forth in the Adam Walsh Act. For these reasons, the Nebraska State Patrol supports LB957. Thank you for the opportunity to present this information today, and I'll be happy to answer any questions you might have. [LB957]

SENATOR LATHROP: Very good. Thank you, Colonel. Are there any questions?
Senator Chambers. [LB957]

SENATOR CHAMBERS: Colonel, the hammer money has not yet been appropriated by Congress, has it? [LB957]

BRYAN TUMA: We had an appropriation. It's consistently been right around \$1.8 million and we were just notified that our Byrne dollars were reduced by 67 percent, which is a huge blow to a number of activities we're involved in. So Byrne dollars have taken a hit, we do know that. [LB957]

SENATOR CHAMBERS: Has there been final action by both houses of Congress and the President on that reduced amount of money yet? [LB957]

BRYAN TUMA: That is pending. [LB957]

SENATOR CHAMBERS: So there could be no money forthcoming... [LB957]

BRYAN TUMA: That's correct. [LB957]

SENATOR CHAMBERS: ...and we will have made all of these changes just because of the threat of losing the money. Not being accusatory, but... [LB957]

BRYAN TUMA: Yeah. [LB957]

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SENATOR CHAMBERS: ...just to make it clear, because there are a lot of changes here. And I think you made it clear, but I just wanted to underscore that this is not Patrol-driven; this is based on federal legislation and requirements that must be put in place in order to get a certain amount of money. [LB957]

BRYAN TUMA: Yes. [LB957]

SENATOR CHAMBERS: Okay. Thank you. That's all that I had. [LB957]

SENATOR LATHROP: Thank you. Senator Pirsch. [LB957]

SENATOR PIRSCH: Let me ask you this question. Obviously Byrne Grants fund to great extent those interagency drug task forces in the state. [LB957]

BRYAN TUMA: Yes, yes. [LB957]

SENATOR PIRSCH: Very important and, you know, have played that role. Aside from that and the funding issue, the...I guess I'd just like to get your personal opinion about the facets of this bill, whether or not, with the funding issue aside, whether they make sense in your opinion. [LB957]

BRYAN TUMA: Well, the emphasis of the federal legislation is to try and create a nationwide database on sex offenders. And I think I mentioned in my testimony it would substantially change the requirements for reporting in our state. Right now, sex offenders that have to register go through a risk assessment process. So we classify these offenders based on their risk of repeating. Our public notification or Web site, we only put level 3 offenders, or those offenders which are at greatest risk to reoffend. Under the federal legislation, offenders are classified based on the crime of conviction. So essentially if they are convicted of anything that's a sex crime, whether it's a misdemeanor or a felony, they all go on the registry. Public notification is made on all offenders and they have mandatory periods, 15, 25, or lifetime offenders. So it would change the way that we do our business Nebraska. It completely changes the focus from risk assessment to crime of conviction. [LB957]

SENATOR PIRSCH: Thank you. [LB957]

SENATOR LATHROP: I don't see any other questions. So thank you for coming down. [LB957]

BRYAN TUMA: Okay. Thank you. [LB957]

COREY O'BRIEN: Good afternoon, Mr. Chairman, senators of the Judiciary Committee. My name is Corey O'Brien and I'm a prosecutor for the Nebraska Attorney General's

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Office. Today it's my privilege to testify in support of LB957. Over the past five years, Nebraska Attorney General's Office has worked in collaboration with the Unicameral to pass a number of important pieces of legislation dedicated to the protection of Nebraska's children from sexual assault and exploitation at the hands of dangerous sex offenders. Included in these successes was an on-line enticement bill passed in 2004 making it a crime to solicit a minor for sex using a computer, LB142 passed just last session making it a crime to send pornography and sexual materials to a minor using an electronic communication device, and LB1199 passed in 2006 that comprehensively strengthened almost every facet of Nebraska law as it relates to sex offenses against children and the way we manage those who commit such offenses. The protection of children from dangerous sex offenders is and must always be a priority for us serving in law enforcement. As such, it must be an ongoing enterprise that constantly strives to improve itself. It is with that purpose in mind that LB957 was introduced and will hopefully be considered and supported by this body. LB957 is the embodiment of the 2006 act of Congress known as the Adam Walsh Act. The Adam Walsh Act provides that by the middle of 2009 all states must pass offender registration and notification legislation that substantially complies with the requirements set forth in the act itself, or else they will lose a portion of the future Byrne Grant funds that are awarded by the U.S. Department of Justice. Byrne Grant funds are a significant revenue source to virtually every law enforcement entity in this state and any reduction of these funds would compromise the level of services provided by law enforcement or other governmental programs because of fiscal reshuffling necessary to offset this lost revenue. While the potential of Byrne Grant funds is a concern, the most important reason for your consideration of LB957 is it will enhance the ability of law enforcement, educators, and parents to protect children from the horrors wrought by repeat dangerous sex offenders who have a predilection to prey upon them. Without question, LB1199 was a landmark piece of legislation that has undoubtedly provided an increased level of protection of Nebraska's children from dangerous sex offenders. LB957 would no doubt increase that level of protection even more and perhaps more important, would bring uniformity and certainty to the entire United States when it comes to sex offender registry and notification laws. At its core, LB957 is a bill that is designed to enhance the information gathering, information sharing, and enforcement process of our existing sex offender registration and notification laws that will ensure that our neighbors in Iowa, Colorado, Kansas, Missouri, Wyoming, and South Dakota are keeping as close of an eye on their sex offenders as we are and will let us know what we need to know if one of their sex offenders wants to relocate to our neighborhoods. Though LB1199 has been a tremendous asset in our effort to protect children from dangerous sex offenders, it can only protect them from those threats we know about. LB957 would effectively close some of those gaps and help us identify even more of those potential threats that may be lurking out there. Therefore, on behalf of the Nebraska Attorney General's Office, I ask for your attention to this most important piece of legislation and look forward to our continuing efforts to protect Nebraska's children. Thank you. If you have any questions, I'll be happy to answer them. [LB957]

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SENATOR LATHROP: Thank you, Mr. O'Brien. Senator Chambers. [LB957]

SENATOR CHAMBERS: Mr. O'Brien... [LB957]

COREY O'BRIEN: Senator. [LB957]

SENATOR CHAMBERS: ...you continue to use the term "dangerous sex offenders" and you said with a predilection to offend again. Did you hear the colonel's testimony? [LB957]

COREY O'BRIEN: I did. [LB957]

SENATOR CHAMBERS: Did you hear how he stated sex offenders are evaluated and registered currently? [LB957]

COREY O'BRIEN: I did. [LB957]

SENATOR CHAMBERS: Did you hear him say that the likelihood of offending or the danger that the person might reoffend went into the decision as to whether to require registration? [LB957]

COREY O'BRIEN: I did. [LB957]

SENATOR CHAMBERS: You...are you saying that every person who has committed a sex offense which would cause him or her to be labeled a sex offender is dangerous in the sense of being likely to reoffend? Is that what you're saying? Are you saying every sex offender is likely to reoffend? [LB957]

COREY O'BRIEN: No, I'm not. [LB957]

SENATOR CHAMBERS: What do you mean by dangerous sex offender then? [LB957]

COREY O'BRIEN: I was being very general and vague. I apologize if that's the case. [LB957]

SENATOR CHAMBERS: Don't apologize, I just want to know for the record what you were referring to. Well, let me ask it a different way. This legislation would require people labeled sex offenders to be registered even though they are not dangerous. Isn't that true? [LB957]

COREY O'BRIEN: That is absolutely correct. [LB957]

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SENATOR CHAMBERS: So it is not really good public policy that a legislature might enact on its own, because Nebraska has not chosen to do that and I'm not aware of other states that have chosen on their own to do it. Consequently, certain lunkheads in Congress did it and they knew that there are some legislatures with legislators who have some principles and would not put that kind of--how can I say this--primitive language in the statute books, so they used the hammer of saying if you don't do this lunk-headed thing that we require, we're going to take some money from you. Now to get rid of all of the extraneous words that I may have said, they didn't feel it was such good legislation that legislatures would adopt it on their own. Therefore, they had to put a hammer to compel the adoption whether legislatures thought it was wise or not. Isn't that the thrust behind this legislation? [LB957]

COREY O'BRIEN: I believe personally that the thrust behind the language is to try to get uniformity across the United States rather than have a hodgepodge system that they currently have in terms of registration and notification laws. [LB957]

SENATOR CHAMBERS: Well, there's a statement that can be analogized: this slavish consistency is the hobgoblin of little minds, meaning that when people say consistency for consistency's sake, even when it is not rational, is what some people want just for consistency. So for uniformity, some people are willing to say we're going to create a Procrustes bed. In mythology, Procrustes was a giant who would invite people to his home and you'd have to eat with him, then you laid on this bed. If you were too tall he'd chop you off; if you were too short he stretched you. The federal government is saying that one size fits all, and whether it does or not they're going to require it. Why has not the Attorney General's Office come to the Legislature when they saw what this Adam Walsh material was, drafted a bill, and said we think you ought to adopt this? Because the Attorney General's Office has initiated legislation. Why didn't...would the Attorney General's Office have brought this to us if it were not for the possible loss of funds? The Attorney General's Office did not bring it to us. And if it were not for the loss of funds potential, it wouldn't be before us today. Would you agree with that? [LB957]

COREY O'BRIEN: I can't speak for the Attorney General personally, but the colonel already had his say and I don't know that I disagree with what the colonel said about that. [LB957]

SENATOR CHAMBERS: And we don't have any assurance that Congress is going to appropriate any of that Byrne fund money, do we? [LB957]

COREY O'BRIEN: We're very hopeful, but we don't know. [LB957]

SENATOR CHAMBERS: Oh, hope...okay. So we could put all these changes in the law, no money will be appropriated, and the Legislature then would not be likely to come back and repeal it because, being cowardly like my legislators are, they don't want to

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appear to be soft on crime. So bad law which got on the books for a bad motive would remain there, even though the bad motive has been removed. That would be a possibility, wouldn't it? [LB957]

COREY O'BRIEN: I wouldn't disagree with that, no. [LB957]

SENATOR CHAMBERS: You work hard to earn your money up there, don't you? [LB957]

COREY O'BRIEN: Yes, sir. [LB957]

SENATOR CHAMBERS: Okay. I just want that in the record. (Laughter) Okay, thank you. [LB957]

COREY O'BRIEN: Hopefully the Attorney General is watching. (Laughter) [LB957]

SENATOR CHAMBERS: I'm going to tell him. [LB957]

SENATOR LATHROP: All right. Any other questions? [LB957]

COREY O'BRIEN: Thank you, Senators. [LB957]

SENATOR LATHROP: Seeing none, thank you, Mr. O'Brien. [LB957]

JIM CRELIN: (Exhibit 7) My name is Jim Crelin and I thank you for the opportunity to speak before the Judiciary Committee today. I do so on behalf of a family who had a son who was sexually molested. And costs aside, looking towards doing the right thing to correct the law in such a way as to reduce this happening in the future, family has asked me as a friend to come before the committee and to speak on their behalf with a letter that they wrote to you; one, because of the emotions of the situation, and two, to keep the son's name anonymous. And so I share the words of the family written from the perspective of the mother about the family's concerns. On October 6, our son's life and our family's life changed forever. I remember it as if it was only yesterday. That evening my son came to me and said, Mom, I was sexually assaulted today by Glen. He was amazingly calm and the next thought I had was: how could this have happened in a place where customers are coming in and out constantly? We immediately called the police and within minutes an officer was at our door. The officer... [LB957]

SENATOR CHAMBERS: Excuse me, I don't want to be rude, but under the rules of the committee other people's testimony is not read, it's submitted. [LB957]

JIM CRELIN: Okay. [LB957]

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SENATOR CHAMBERS: If you were going to testify, you could; but to simply read somebody else's testimony, which this clearly is, would not be the way the committee would operate. And it has nothing to do with the worth or merit, but other people have attempted on very serious issues to read material in and it was not permitted. [LB957]

JIM CRELIN: Okay. [LB957]

SENATOR CHAMBERS: But if you want to testify or paraphrase the best you can, there would be no problem with that at all. [LB957]

JIM CRELIN: Okay. And their words could continue? [LB957]

SENATOR CHAMBERS: Say it again? [LB957]

JIM CRELIN: Their words could still be in your possession? [LB957]

SENATOR CHAMBERS: Right. [LB957]

JIM CRELIN: Okay. In essence, on their behalf, what they're trying to get at is through the situation that occurred, that when a situation of sexual molestation takes place, that this particular individual was a repeat offender, had done it two times before. And in the process they went through a situation where they had given permission to their son to work at a local business here in town. They did so based on the fact that the young man had been complimented by the manager of that store to see that he was a responsible young man. It looked like a great opportunity from the parent's perspective to give their son this opportunity to learn responsibility and to...he was excited about making some money, money that he could use on his own. The manager of that store actually took advantage of that situation and used that opportunity to molest this young man. The parents actually had taken opportunity to check the sexual molestation registry and could not discover that this person was there and had committed these crimes previously because the person lived at a far distance and the registry did not cover the fact of where his employment was. And so the portion of the bill which identifies the place of business of a previous sex offender would have been extremely helpful in this case for them to make a wise decision in the way in which they treated or handled the situation of whether or not to allow their son to work at that place. The other portions as...you actually had two bills. I don't know what you were going to do with the previous bill. But also the fact that this place of business was 500 feet from a school, at present it's a distance residency but no distance for employment. And that was their concern, and they would ask that you consider approving both these two previous bills, if the previous one actually is also brought forward. [LB957]

SENATOR LATHROP: Very good. Thanks, Mr. Crelin. [LB957]

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JIM CRELIN: Thank you. [LB957]

SENATOR LATHROP: Senator Chambers. [LB957]

SENATOR CHAMBERS: I applaud you for being willing to speak for the family and they're fortunate to have somebody willing to do that on their behalf. [LB957]

JIM CRELIN: Thank you, appreciate it. And only did what I did because I thought it was right. And I'm glad that you pointed out and made it all right in the end. Appreciate it. [LB957]

SENATOR LATHROP: You did a nice job. Let me make sure there's no other questions before you...seeing none, thank you, Mr. Crelin. [LB957]

JIM CRELIN: Appreciate it. [LB957]

SENATOR LATHROP: Are there any other proponents? Are there any opponents to LB957? Seeing none, any neutrals? Senator Ashford. [LB957]

SENATOR ASHFORD: Just very briefly, I think Senator Chambers brings up a great point. And you know, in the last several years it's just been such an utter failure of the federal government to be consistent in dealing with some of these issues; immigration being...we're going to hear immigration bills sometime in the future. But obviously that's an example. And clearly, Senator Chambers, you're right: this is an expansion of current law, not only for dangerous sex offenders but for individuals who have committed a misdemeanor offense, in essence. So it's a decision this committee is going to have to make, and it's a fundamental one. And that is whether or not we expand beyond what is our public policy today, which obviously the public policy that we have was determined by this Legislature to be reasonable at some point. So we're asking for a significant expansion of that in this bill in order to satisfy the requirements of the federal government. I think a separate discussion is, is this reasonable on its face, because quite frankly it appears very clear, and there's been quite a bit of publicity about the loss of Byrne funds and it has been a longstanding problem that we have in the states to pick up the mess of the federal government and to pick up those problems. We face that in the Judiciary Committee all the time. I appreciate you bringing up that issue because it's not going away and we'll be dealing with this in the immigration area with the incredible utter failure of this government, of this federal government to deal with the problem of immigration. So I appreciate you bringing that up. With that, I'm sure we'll have some further discussion on this bill. Yes, sir? [LB957]

SENATOR LATHROP: Yes, Senator Chambers. [LB957]

SENATOR CHAMBERS: Based on what the colonel said, there would be \$600,000

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available to the state if money is appropriated. A 10 percent reduction would occur if we don't do this, 10 percent of \$600,000 is \$60,000. Were I of a mind to sell out my principles, it would take more than \$60,000 to purchase them. But that's all I would have. [LB957]

SENATOR ASHFORD: Just in response, it's likely that it won't be even...you know, the loss would be even less than \$60,000 by the time Congress gets finished with these Byrne funds. So I appreciate your point. [LB957]

SENATOR CHAMBERS: That's all I have. Thank you. [LB957]

SENATOR LATHROP: Thank you. (See also Exhibits 5 and 6.) [LB957]

SENATOR FULTON: Thank you, Mr. Chairman, members of the Judiciary Committee. [LB735]

SENATOR ASHFORD: LB735. I should have spoken. Go ahead. [LB735]

SENATOR FULTON: Thank you for allowing me to present this idea to you today, which comes in the form of a bill, LB735. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29. I bring this bill before you today in response to a tragic incident occurring here in Lincoln this past October. A level 3 sex offender was convicted in Dodge County District Court in 1993 on two counts of first degree sexual assault. Both assaults involved boys. The offender was sentenced to 10 years to 20 years in prison and he was paroled in December of 2004. This past October, a 10-year-old boy told a parent that he had been sexually assaulted at a convenience store near his school earlier in the day. As it turns out, it was the same offender. Police went to the store to investigate and before police could do so, the offender went to a back room in the store and committed suicide. Having just read of this doubly tragic incident in our local newspaper, I was contacted by the parents of this boy in my capacity as a Lincoln senator. I was asked how the offending individual could so easily work so close to a school where he would surely be proximate to the predilection to reoffend. I could offer no answer. LB735 allows political subdivisions to enact employment restrictions for sexual predators akin to the residency restrictions already in statute. The present Sexual Predator Residency Restriction Act permits political subdivisions to impose a 500-foot barrier from schools and child care facilities within which high-risk level 3 sex offenders may not reside. Such restrictions, however, do not address cases where a high-risk offender purposefully seeks employment in an area near children. Whatever logic by which the state of Nebraska allowed for residency restrictions seems also applicable to places of employment, for one generally spends as much time in his place of employment as he does at home. The existing statute as applied to residency has not shown to have correlated to a greater incidence of sexual predators going underground. Thus we are left with a judgment as legislators as to

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whether restrictions on residency and employment are a proper part of our policy regarding those offenders who present the greatest risk to children. I posit to the committee that employment restrictions allow for greater public safety by placing an additional barrier to recidivism by those who are, by definition, at a great risk of reoffending. This is a bill that I wish I did not have to introduce. However, one real-life situation has ended the life of one man and tragically altered the life of an innocent child. This captures my attention. Given the likelihood of level 3 sex offenders to commit their crimes again, I believe this is an important tool in protecting the safety of our children. This tool could be of use as we move forward in enacting the Adam Walsh Act, should the committee choose to do so. Considering the tragic costs of inaction, legislative action with respect to high-risk sex offenders seems both reasonable and necessary, and I ask the committee to consider this measure favorably. If there are any questions, I would be glad to try to answer them. [LB735]

SENATOR LATHROP: Thank you, Senator Fulton. Senator Pedersen. [LB735]

SENATOR PEDERSEN: Thank you, Senator. Senator Fulton, you mentioned in your testimony, your opening that the highly likely possibility...I mean, it's very likely that these offenders will offend again. Where did you get that information? [LB735]

SENATOR FULTON: I believe it's...I won't use the exact language because I'm not positive of the exact language, but a level 3 sex offender I believe is classified as likely to reoffend. So that would be a judgment that's made at the time that that moniker is attached to this individual. [LB735]

SENATOR PEDERSEN: Okay. That makes sense. Thank you. [LB735]

SENATOR LATHROP: Senator Chambers. [LB735]

SENATOR CHAMBERS: Senator Fulton, from the discussions you and I have had on the floor from time to time, you will establish a principle and you feel that principle should apply. If the principle here is to protect children and if a person with certain predilections is the one from whom they need to be protected, why would you agree with legislation currently on the books which will state it does not apply if a person were living in a certain area already, or before a certain date? Is that to say that the fact that the person lived there before a certain date, his predilections will be taken care of and he is not likely to reoffend, or was a political decision made? [LB735]

SENATOR FULTON: So the question is... [LB735]

SENATOR CHAMBERS: In your legislation, if you turn to page 3, the green copy... [LB735]

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SENATOR FULTON: Ah, line 17? [LB735]

SENATOR CHAMBERS: ...you will see in line 4, "A political subdivision may enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside" and so forth. Then in line 10, "An ordinance, resolution, or other legal restriction enacted by a political subdivision shall not apply to a sexual predator who." Then it tells that one may in fact be residing within the zone that is prohibited, but they already were there. Is that to say that they're not dangerous, or is it a political decision that was made? [LB735]

SENATOR FULTON: Well, I wouldn't say that necessarily they aren't dangerous, but the...it had to have been a decision that was made, but it was made previous to me. That's existing statute. I think I'm understanding your question... [LB735]

SENATOR CHAMBERS: Yes, you're right, it is. [LB735]

SENATOR FULTON: ...why is it that July 1, 2006. [LB735]

SENATOR CHAMBERS: But these people would be living less than the prescribed distance from a facility or working less than a prescribed distance, but they're allowed to continue to do so. If all of these people are considered to be equally dangerous, why are you going to make exceptions? [LB735]

SENATOR FULTON: Senator, if I could have some conviction that you would accept the changing of that date to make retroactive, then perhaps I would consider that. But I didn't honestly address the date. My... [LB735]

SENATOR CHAMBERS: What difference does it make what I think? You're a principled man. You act on principle. So since you are amending this very language, could not you have included amendatory language that would remove these exemptions that I just called your attention to? Why didn't you do that? [LB735]

SENATOR FULTON: The exemption that would be applicable to your question is the exemption on date. And since that was in existing statute, I felt that it was consistent. We wanted to make the bill as straightforward as possible so as to have buy-in to move it forward. So I guess it would be somewhat of a political decision. [LB735]

SENATOR CHAMBERS: Because it would be just as straightforward if you change the date and no date was put there. No sexual predator would be allowed to live within this distance whether he or she had been living there at the time the bill took effect or moved there. Let's say that I'm a sexual offender and I'm living within this zone at the time the law takes effect. I can stay there. You're a sexual offender and you can't move there. But we both...in fact, we hang out together. We lay plans together. We're going to

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do this, we're going to do that. To use your...we're the bad guys. Why should this bad guy be allowed to live there and you not, if the aim is to protect children? You are willing to make some accommodation for political purposes also, aren't you? [LB735]

SENATOR FULTON: That is accurate, yes. That is an accurate statement. [LB735]

SENATOR CHAMBERS: Okay. [LB735]

SENATOR FULTON: Could I give you some rationale as to why, Senator? [LB735]

SENATOR CHAMBERS: You don't have to. We'll do that another time because I don't want to keep us here too long when my question has been answered. [LB735]

SENATOR LATHROP: Thank you. Are there any other questions for Senator Fulton? Okay, thank you. Are there any proponents that wish to speak on LB735? Any opponents? [LB735]

MEL BECKMAN: Members of the Judiciary Committee, my name is Mel Beckman. [LB735]

SENATOR LATHROP: Sir, could you spell your last name for us? [LB735]

MEL BECKMAN: B-e-c-k-m-a-n. [LB735]

SENATOR LATHROP: Thank you. [LB735]

MEL BECKMAN: I honestly wasn't prepared to talk today. I thought there would be a lot of people here opposing this bill. At any rate, I wanted to register an objection. I don't see how this bill could further public security. A sex offender needs the stability of a job, stability of a home in order to refrain from sex offending. What's needed, I think, for public security is a great deal more emphasis on aftercare when they leave the regional center or the prison, a great deal more help with jobs and housing; no more legislation putting restrictions on where they can live or where they can work. And I urge you not to advance the bill. Thank you. [LB735]

SENATOR LATHROP: Thank you, Mr. Beckman. Senator Chambers. [LB735]

SENATOR CHAMBERS: Mr. Beckman, some people may not have come because they're aware of my view of issues. That's no excuse for them not to come, but they may have thought that I would do the work that they should have helped do it. But it helps when members of the public will state their rationale because they're living out there and could wind up living near one of these persons where that person lives or works. So it helps when the public does express its view for or against. But I thought

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there might be people here today, too, as it didn't turn out to be. But that's all I'd have. Thank you. [LB735]

MEL BECKMAN: Thank you. [LB735]

SENATOR LATHROP: All right...oh, pardon me. One more question. Senator Pedersen. [LB735]

SENATOR PEDERSEN: Thank you. Mr. Beckman, I've known you for a long time. I know that you've spent a lot of time in studying the criminal justice system--those who have been sentenced, those who have come out. Are you aware of what the recidivism rate is for sex offenders? Is there...not a number, but... [LB735]

MEL BECKMAN: My understanding is that it's comparatively low, but I'm not equipped to vouch for that. [LB735]

SENATOR PEDERSEN: You publish a paper in the state called the Criminal Justice Review and they do a lot of research. But my research has also been, since in this committee for 16 years, that the recidivism rate for sex offenders is usually lower than most other crimes. Doesn't research show that? [LB735]

MEL BECKMAN: That's my impression, same as for people who are released. [LB735]

SENATOR PEDERSEN: It's just that pedophilia especially is such a heinous crime that it seems to be bumped up as if...the same reason when people think that the prison is full of all murderers and when we've got less than 18 percent of our inmates are there for, you know, are classified as dangerous criminals. [LB735]

MEL BECKMAN: And as for treatment, the recidivism rate goes lower. [LB735]

SENATOR PEDERSEN: Same type of thing is probably happening with sex offenders. I mean, because of the crime itself, like murder is so serious and they're in prison, then they've got to be all murderers and sex offenders. And then we have a problem also with sex offenders being classified all in the same rate, if it was an adult rape of another adult or pedophilia, whatever, seem to be classified in the same rate. Appreciate what you're doing for the state, the work that you do and the research and your paper. Thank you. [LB735]

MEL BECKMAN: Thank you. [LB735]

SENATOR LATHROP: Thank you. Oh, I'm sorry. Senator Pirsch has a question. [LB735]

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SENATOR PIRSCH: Just briefly, I appreciate you coming down here today, Mr. Beckman, and testifying. I was wondering if you might, because my understanding is you engage in this quite a bit, this (inaudible) if you could provide, you know, if there's studies, empirical type of studies or objective looking into that would support that thesis, I'd appreciate if you could share those with at least me. I don't know if other members of the committee are interested, but I'd be interested in seeing that as well. [LB735]

MEL BECKMAN: Okay. Thank you. [LB735]

SENATOR LATHROP: Any other questions? Okay, thank you, Mr. Beckman. Do you wish to close, Senator Fulton? [LB735]

SENATOR FULTON: Quickly. Thank you, Mr. Chairman. In closing, I want to draw attention and remind that this bill has to do with sexual predators. This is in page 2 of the green copy, line 22, "Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has a high risk of recidivism." So there's a level of specificity to the bill. And so that...your question, Senator Pedersen, I hope that we're trying to focus. And I've chosen to focus within this existing statute. The logic by which the state moved forward to restrict residency, I think, is also applicable to employment. And that's ultimately why I decided to go ahead and move forward with this bill. So in conclusion, I hope that logic can be considered and I hope you look favorably on the bill. [LB735]

SENATOR LATHROP: Any questions? Thank you, Senator Fulton. That will conclude our hearing on LB735. And next up looks like LB902, Senator Pankonin. (See also Exhibit 8.) [LB735]

SENATOR PANKONIN: Good afternoon, Vice Chairman Lathrop and members of the Judiciary Committee. I am Dave Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LB902. The bill serves as the 2008 annual pharmacy update legislation. LB902 would conform the state controlled substance schedule to provisions of federal law by designating oripavine as a Schedule II controlled substance. Oripavine is an opiate and a derivative of thebaine, a natural constituent of opium. It possesses an analgesic potency comparable to morphine and it has the potential for dependence. Until recently, oripavine was a Schedule II controlled substance in the United States by default as a thebaine derivative, although it was not explicitly listed in the federal schedules. On September 24, 2007, the Drug Enforcement Administration formally added oripavine to Schedule II. The Nebraska Pharmacists Association was contacted late last fall by the Board of Pharmacy with a request that tramadol be added to the list of Schedule IV controlled substances. Tramadol is a narcotic analgesic used for treating moderate to severe pain and is generally thought to have a potential for dependence. It is this potential for dependency that has led the Board of Pharmacy to suggest that tramadol be designated as a Schedule IV controlled

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substance. While not scheduled as a controlled substance at the federal level, tramadol has been classified as a Schedule IV controlled substance in Arizona and Schedule V controlled substance in Georgia. It is controlled but not scheduled in North Dakota and is classified as a dangerous drug in Ohio. LB902 would add tramadol to Schedule IV in Nebraska. Under current law, each registrant in Nebraska who manufactures, distributes, stores, or dispenses controlled substances in Schedules I, II, III, IV, or V is required to prepare a biennial inventory of each controlled substance in his or her possession. One of the requirements of the inventory is that the registrant list the exact count or measure of all Schedule I or II controlled substances and list an estimated count or measure of all controlled substances listed in Schedules III, IV, and V, unless the container holds more than 1,000 tablets, capsules, or milliliters, in which case the inventory must list an exact count. LB902 would require that the controlled substance inventory be prepared and submitted to the Department of Health and Human Services on an annual rather than a biennial basis commencing January 1, 2009, and would require an exact count or measure of all Schedule I through Schedule V controlled substances. I would be happy to answer questions if I can. However, representatives who are here to testify on behalf of the Board of Pharmacy and the Nebraska Pharmacists Association may be better able than I am to discuss the details of LB902. [LB902]

SENATOR ASHFORD: Thanks, David. Any questions? Okay. Are you going to stick around? [LB902]

SENATOR PANKONIN: I'll stick around for a while. [LB902]

SENATOR ASHFORD: All right. Proponents? [LB902]

KEVIN BORCHER: (Exhibit 9) Thank you, Senator Ashford, members of the Judiciary Committee. My name is Kevin Borchner, B-o-r-c-h-e-r. I appreciate the opportunity to speak to you today on LB902. I do represent the Nebraska Board of Pharmacy. The Board of Pharmacy does support this bill. The first piece of this bill is written to classify tramadol, also known as the brand name Ultram, as a Schedule IV controlled substance. When Ultram was initially marketed in '95, the FDA considered it to be of low abuse potential with the limited information they had, and did not consider it a controlled substance at that time. Since then, the national FDA MedWatch database has reported 766 cases of tramadol abuse and 482 cases of tramadol withdrawal between '95 when it was marketed and 2004. I do not have any updated information at this time. There have been several articles and letters to the editor in major journals, medical journals throughout the country, that also talk to the abuse and addiction potential of this drug. Closer to home in Nebraska, there have been instances of healthcare professionals, including physicians and nurses, who have been disciplined due to abuse and diversion of tramadol, including a physician whose license was revoked for theft and abuse of tramadol, and a nurse who was terminated at their employment in Omaha at a hospital

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for diversion and abuse of tramadol. The Department of Health also performs some drug screens for drugs, looking for tramadol as part of probationary terms for individuals and licensees who have been on, part of the probation terms, diverting drugs of abuse. Tramadol is currently not listed as a controlled substance by the FDA. However, because of more than 1,200 reports of abuse and withdrawal submitted to the FDA, the FDA has made changes to their labelling of tramadol. And I have included in bold in my statement specifics from that. Tramadol may induce psychic and physical dependence of the morphine type. Tramadol should not be used in opioid-dependent patients. Tramadol has been shown to reinitiate physical dependence in some patients that have previously been dependent on other opioids. Dependence and abuse, including drug-seeking behavior and taking illicit actions to obtain the drug, are not limited to those patients with prior history of opioid dependence. Drugs such as tramadol are sought by drug abusers and people with addiction disorders and can be abused in a manner similar to other opioid agonists, such as morphine, oxycodone, or Vicodin. At this time, the DEA has not changed the status of tramadol. However, they have submitted a report to the FDA recommending that tramadol be classified as a controlled substance. Several other states are considering the reclassification of tramadol and five states have already enacted legislation to monitor tramadol or classify it as a controlled substance or dangerous drug. The board recognizes the effectiveness of this drug. At the same time, there are significant concerns of the potential and actual abuse of diversion of tramadol and the necessity to protect the public by classifying tramadol as a controlled substance. Another important piece of this bill pertains to modifying the current statute...excuse me, requires pharmacies to perform an annual inventory of all controlled substances instead of the current biennial requirement. Pharmacies including Wal-Mart and Walgreens already do this with an annual inventory. Change would not only be able to detect diversion quicker and easier, but also allow the state pharmacy inspectors to perform audits of pharmacy controlled substances more efficiently because they will not have to go back 24 months and do a full audit, but they can go back to a maximum of 12 months. Many pharmacists who have been audited and have discrepancies in their narcotic counts have voiced their agreement that they do see benefits of performing annual inventories with counting the exact number of doses instead of estimating their controlled substance inventories. The board does respectfully ask that this bill proceed. I thank you for your time. [LB902]

SENATOR ASHFORD: Senator Schimek. [LB902]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Just a quick question. Is this a pain medication? Is that what this is? [LB902]

KEVIN BORCHER: Tramadol, or Ultram, is a pain medication. That's correct. [LB902]

SENATOR SCHIMEK: Okay. Are most controlled substances pain medications?
[LB902]

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KEVIN BORCHER: Many pain medications or analgesics are controlled substances. You also have antianxiety medications, Valium and Xanax, for example. [LB902]

SENATOR SCHIMEK: Okay, thank you. [LB902]

KEVIN BORCHER: You're welcome. [LB902]

SENATOR PIRSCH: So is the chemical structure, that then similar to morphine? [LB902]

KEVIN BORCHER: It does act on the same neural receptors that morphine does act on. And then it can cause the same type of effects that morphine can, including the abuse and addiction potential. [LB902]

SENATOR ASHFORD: Senator Chambers. [LB902]

SENATOR CHAMBERS: Mr. Borchner, will any person who uses morphine become addicted to it? [LB902]

KEVIN BORCHER: No, not anyone who uses it; just as not everyone who may take Valium or Xanax or other controlled substances, they may not become addicted to it. [LB902]

SENATOR CHAMBERS: What about heroin? [LB902]

KEVIN BORCHER: Most people who do take heroin will become addicted. It has a very strong potential for that. [LB902]

SENATOR CHAMBERS: But not everybody? [LB902]

KEVIN BORCHER: I am not aware of everyone who has taken heroin becoming addicted. [LB902]

SENATOR CHAMBERS: Excuse me. Is there any drug about which it can be stated that anyone who uses it--I don't mean necessarily one time, but uses it long enough to become addicted, if it is addictive--is there any drug which will be addictive to every person? [LB902]

KEVIN BORCHER: I'm not sure if I could honestly answer that and give you a good example. [LB902]

SENATOR CHAMBERS: Okay. Is Ultram a brand name? [LB902]

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KEVIN BORCHER: Yes, that's correct. [LB902]

SENATOR CHAMBERS: What drug company makes that product? [LB902]

KEVIN BORCHER: It is made by Ortho-McNeil. [LB902]

SENATOR CHAMBERS: Is that an American-based or foreign-based company?
[LB902]

KEVIN BORCHER: I do not know who is a parent company or who actually owns that.
[LB902]

SENATOR CHAMBERS: Is it a large pharmaceutical house? [LB902]

KEVIN BORCHER: Ortho-McNeil is very large, yes. [LB902]

SENATOR CHAMBERS: And with all of this evidence of the kind that you've presented,
the FDA has not named it as a controlled substance yet? [LB902]

KEVIN BORCHER: Not currently at this time. That is correct. [LB902]

SENATOR CHAMBERS: Have you read of criticisms of the FDA because there are
employees and doctors who are on the payroll of drug companies, pharmaceutical
houses, which are trying to get approval for the use of drugs whether they're going to be
controlled substances or not? [LB902]

KEVIN BORCHER: I have heard information to that effect, but I have not...I am not
familiar with specific instances. [LB902]

SENATOR CHAMBERS: Could this be an example of where the FDA is not moving in
the direction which you're asking the state to move on a drug where they have more
information about it than we do? Could it be that there's an inappropriate influence being
exercised on the FDA that would prevent it from doing with this drug what you're asking
us as a state to do? [LB902]

KEVIN BORCHER: I don't know the answer to that. I could see that as a possibility.
[LB902]

SENATOR CHAMBERS: Do you think there are pharmacists who have tried to
persuade the FDA to do this? [LB902]

KEVIN BORCHER: Yes. [LB902]

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SENATOR CHAMBERS: We won't be offended, at least I won't. Do you think people who work with and for the FDA would have more knowledge of these drugs than senators who, when it comes to drugs, are laypeople, in effect? [LB902]

KEVIN BORCHER: I would hope the FDA has plenty of information and knowledge for that. [LB902]

SENATOR CHAMBERS: Well, why should we, who are laypeople, do what you're asking us to do when the FDA, composed of experts, don't feel it's necessary to be done? [LB902]

KEVIN BORCHER: The DEA is a--and forgive me for not knowing the exact structure--but the DEA is under the FDA. The DEA, Drug Enforcement Administration... [LB902]

SENATOR CHAMBERS: Yeah, but they're law enforcement. I don't think much of law enforcement people anyway. Just like some of my colleagues will say that police officers, their disciplinary activities should not be made available to the public, but they'd be in favor of requiring nondangerous sex offenders to register as though they were dangerous. So law enforcement, including prosecutors--especially prosecutors--don't carry much weight with me. The DEA is not the agency that determines whether or not a substance is to be a controlled substance. Isn't that true? [LB902]

KEVIN BORCHER: The DEA made recommendations to the FDA who makes those decisions. [LB902]

SENATOR CHAMBERS: But here is my question: The DEA is not the agency that determines that a substance will be controlled. Is that true? [LB902]

KEVIN BORCHER: That is true, yes. [LB902]

SENATOR CHAMBERS: Okay. And the FDA, which does make such determinations, has to date determined that this substance should not be a controlled substance. Is that true? [LB902]

KEVIN BORCHER: That is a true statement. There is more information. [LB902]

SENATOR CHAMBERS: Well, why don't we wait until the FDA does it before we do it? [LB902]

KEVIN BORCHER: It's not always good to be the last in line on something where there is enough information to show that it is a dangerous drug. Other states have already

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enacted that and there are more states looking at that. And because of the information, because of information we have that shows that there is abuse and addiction potential to the citizens of Nebraska... [LB902]

SENATOR CHAMBERS: Georgia is one of those states? [LB902]

KEVIN BORCHER: Yes, it is. [LB902]

SENATOR CHAMBERS: Where is the CDC located? [LB902]

KEVIN BORCHER: CDC is...I believe it's in... [LB902]

SENATOR CHAMBERS: Atlanta, Georgia. [LB902]

KEVIN BORCHER: Atlanta, Georgia. Yes. [LB902]

SENATOR CHAMBERS: Have you seen recently where there was certain findings relative to exposure to formaldehyde which were not forwarded because the CDC was not doing so, and some of their reporting physicians were told don't include that information in your reports? Had you been aware of anything like that? [LB902]

KEVIN BORCHER: No, I am not aware of that. [LB902]

SENATOR CHAMBERS: Okay. What is there about Georgia that would make it a state so advanced and forward-looking that Nebraska ought to follow Georgia? [LB902]

KEVIN BORCHER: I wouldn't say that we want to follow Georgia. I think we want to look at what is going on throughout the country and within Nebraska, because we want to protect our citizens. And with the information showing that some of our citizens have been at risk, that the drug has been shown to be dangerous by medical professionals, that we want to reduce that risk or potential for diversion. And making it a controlled substance could help with that. [LB902]

SENATOR CHAMBERS: How would we reduce by...it can be obtained over the counter now? [LB902]

KEVIN BORCHER: No, it cannot be obtained over the counter. It can be written with a prescription from a physician, but there are certain restrictions that can be put on making it a controlled substance, such as inventorying it, watching for diversion of that drug. [LB902]

SENATOR CHAMBERS: But before we go that far, how would our doing this reduce the inappropriate use of it? [LB902]

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KEVIN BORCHER: The drugs that are not controlled substances are made more available. They're not maybe locked up. They may be available on, let's say, in a hospital on a nursing unit or in a pharmacy on the general shelves where... [LB902]

SENATOR CHAMBERS: But if the healthcare and medical professionals are aware that there is a danger, it is incumbent upon them to take all the precautions with this drug that they would with controlled substances. Isn't that true? [LB902]

KEVIN BORCHER: If individuals are aware that it is dangerous, such as the place of employment I'm at for the last six years, we consider it to be a controlled substance. We have it locked up in a narcotic vault. We have to do counts on that every time it's being accessed. So we have for several years considered it a controlled substance. [LB902]

SENATOR CHAMBERS: And the argument that you present to us is that if we make it a controlled substance, then every entity, agency, individual, or whatever who would handle this drug legally would have to treat it as a controlled substance, keep it secure, and handle it like every other controlled substance. And by so doing, it is your believe and that of the pharmacy group you're speaking for that it would reduce the inappropriate use of this drug in Nebraska. [LB902]

KEVIN BORCHER: We do believe that, yes. [LB902]

SENATOR CHAMBERS: How do you think people are obtaining the drug now who are misusing it? [LB902]

KEVIN BORCHER: I could only make guesses or assumptions to that. [LB902]

SENATOR CHAMBERS: Well, speculate. [LB902]

KEVIN BORCHER: Okay, I could speculate that if an individual who was addicted to other painkillers, such as morphine or oxycodone, and had a pain management agreement with a physician that they could not obtain those drugs, they could go to tramadol, they could ask their physician to obtain tramadol as a prescription. They could go to multiple physicians and multiple pharmacies to obtain that drug; sort of doctor shopping or pharmacy shopping to obtain enough. And that dependence and abuse potential would increase. If it were monitored, restricted closer, then it would be a little bit tougher for individuals to obtain that drug. [LB902]

SENATOR CHAMBERS: I think you've closed the circle. Thank you for being so indulgent. That's all that I would have. [LB902]

KEVIN BORCHER: Thank you very much. [LB902]

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SENATOR ASHFORD: Kevin, I...Senator Pedersen. [LB902]

SENATOR PEDERSEN: Thank you, Senator Ashford. Mr. Borchert, has there been...what brought the awareness to this? Has there been any law enforcement or pharmacies that have discovered that this drug is being stolen or has there been a lot of bad scripts, fraudulent scripts written for it? [LB902]

KEVIN BORCHER: I'm not aware of fraudulent prescriptions. I have spoken to the Nebraska Licensee Assistance Program. They have encountered individuals who have been abusing and addicted to tramadol. At the hospital that I work at, we had to terminate a nurse for theft and abuse and addiction of tramadol. We do have other instances. From hearsay, I can speak to other individuals who have had problems with this. [LB902]

SENATOR PEDERSEN: Strengthwise, where does this stuff come in with OxyContin, oxycodone, maybe Valium, Librium, fentanyl? Where does this strength come in at? [LB902]

KEVIN BORCHER: The DEA has a classification schedule, actually Schedule I, which has no medical use, which is the strictest, to Schedule V. Items such as fentanyl, OxyContin, morphine, Demerol, Dilaudid are Schedule II. You have something on the other side of that spectrum: Phenergan with codeine, cough syrup, which is a Schedule V. So we're looking at making this a controlled substance, but not nearly as tightly restricted as fentanyl or Dilaudid or heroin. It's more on the line, on the spectrum... [LB902]

SENATOR PEDERSEN: This is more on the other side. [LB902]

KEVIN BORCHER: Correct. [LB902]

SENATOR PEDERSEN: Thank you. [LB902]

KEVIN BORCHER: You're welcome. [LB902]

SENATOR ASHFORD: Yeah. No, go ahead, Senator Chambers. [LB902]

SENATOR CHAMBERS: Just one question, and it's aside from what we're talking about here, but kind of in the ballpark. The federal government may not make a substance controlled, but the state can. In other words, we can put a higher level of regulation on it than the federal government has chosen to do. [LB902]

KEVIN BORCHER: Yes, sir. [LB902]

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SENATOR CHAMBERS: Can the state lower the restricted status of a controlled substance below what the federal government has imposed on it? [LB902]

KEVIN BORCHER: The state could not do that because we would have to look at the stricter of whatever the state or federal laws are. [LB902]

SENATOR CHAMBERS: Right. And I agree. That wasn't a test, just to get it in the record. So this dangerous substance--where there is evidence, and I don't mean only anecdotally, but empirical evidence not from one community, one state, but wherever this shows its head, that it is dangerous enough to be a controlled substance--the federal government has chosen not to render it such. But on the other hand marijuana, which has been shown to have an additional medicinal value, cannot be used without violating federal statute, law. And even if a state chose to do it, that would not immunize anybody from federal prosecution if that person acting under the allowance of the state would prescribe it or make use of it. Correct? [LB902]

KEVIN BORCHER: I'm not familiar with the specifics, but I'll take your word on that. [LB902]

SENATOR CHAMBERS: Because that's what they were doing in California and they were...the Justice Department was saying, their people, to doctors if you get involved in this, we're going to lift your license and whatever other thing can be done by way of prosecution. But they have never established that it does not have a medicinal value, they simply assert it. Well, it can't have a medicinal value because it's a controlled substance. That's their argument. But that's all I have. You've been so helpful. You shouldn't be such a nice person and you wouldn't have to answer all these questions from me. (Laughter) [LB902]

SENATOR ASHFORD: I'd like to...if anybody else has any questions they could go first, but I'd like to second what Senator Chambers said. I think you've given very good testimony and I appreciate Senator Pankonin bringing the bill. I think this is another in a long line of bills that we're getting into our committee that demonstrate the failure of the federal government. I think it was yesterday it was on, maybe it was NPR that had an expose' about the underfunding of the FDA, the inability of the FDA to, in any kind of appropriate manner, go through the processes of dealing with things like this particular drug. And to me, it's just, as we saw in our last bill and as we're going to see in immigration, we have not been...our state is not well-served by this government. And I applaud you for coming here. I like the bill. I think it really...it shows how...are you on the board? [LB902]

KEVIN BORCHER: Yes, I am. [LB902]

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SENATOR ASHFORD: So you're not a paid part of the Board of Pharmacy. Where do you work? [LB902]

KEVIN BORCHER: I work at Nebraska Methodist Hospital in Omaha. [LB902]

SENATOR ASHFORD: In Omaha. Well, I like the bill and I think, again, because the federal government has failed miserably in protecting its citizens, it's incumbent upon you and what you do, and you're doing it well, to so...and I'm very impressed. So I appreciate your testimony. Thank you. [LB902]

KEVIN BORCHER: Thank you for your support. [LB902]

ROBERT HALLSTROM: (Exhibit 10) Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Pharmacists Association in support of LB902. And perhaps the wisest thing I did today was let Mr. Borchner come up first and testify since he's the (laughter) expert in the field. And there's not too much to add. Senator Pankonin has told you what the bill does and Mr. Borchner went through all the details. I do think that it is not unprecedented, in the many years that I've represented the pharmacists, to come forward occasionally and ask for something to be done that the feds have not yet done. We do come in, as Senator Pankonin indicated, on an annual basis to update the state schedules to match those of the federal, not because it's not something that is not enforceable because it's not in state law, but more so to ensure that state law enforcement can take care of the issue rather than having to look to the federal law enforcement officials for enforcement of our controlled substance schedules. With that, I'd be happy to address any questions. [LB902]

SENATOR ASHFORD: Any questions of Bob? Thanks, Bob. [LB902]

ROBERT HALLSTROM: Thank you. [LB902]

ROGER KACZMAREK: My name is Roger Kaczmarek, R-o-g-e-r K-a-c-z-m-a-r-e-k. I am the current chairperson for the Board of Pharmacy. I just wanted to make a couple comments. Kevin did a great job. I hope he answered all your questions. I guess as a pharmacist, we are concerned about people taking medication correctly. We're concerned about their general health. We're concerned about how they influence other people. And I'm sure all of you at one time or another have had to take a prescription medication. We see things, and I do part-time work in a retail field. Senator Chambers talked about the difference between why doesn't the FDA act first and states will act second. I think the pseudoephedrine bill that was passed a few years ago is a good example of that. We saw a huge problem within the state with meth production. You talked about the addiction. It is our understanding professionally that that is the worst drug as far as an addiction. Once you've had that drug, the percentage of giving up that

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drug is less than 5 percent. It is an unbelievably difficult drug to get off. And our concern here is the fact that we want people to have pain control. We also want people to follow the laws. And we want to work with the other healthcare providers and work with the general public to make sure that they are getting the correct medication, the best medication they can for their disease states. You talked about the FDA. I think a perfect example of that is what happened with Vioxx a few years ago. I don't know if any of you ever took the drug, but it was a tremendous drug. That was a huge loss for citizens in this country to lose that drug. That was a choice that Merck made to pull it off the market. We have many drugs that are on the market today that have what we call black box warnings. They have discovered once it comes out of study, once it gets into the general public we see things that maybe they didn't see very much when it was just in their investigational study. That's...and by reporting that, that's how we determine how effective that drug is and if there's going to be issues that we didn't see. We need that reporting mechanism. In the case of some of these drugs, we don't have a very good reporting mechanism because people are afraid to talk about it or bring it up or whatever. And who does that hurt? That hurts all of us. So I just wanted to make a general comment, you know, from a practitioner and to see...just to carry on what Kevin did. He had a great program. Did anyone have any questions? [LB902]

SENATOR ASHFORD: That's my job. Anybody have any questions? [LB902]

ROGER KACZMAREK: I'm sorry. [LB902]

SENATOR ASHFORD: Senator Schimek. I don't have much to do, but that's the one thing I get to say. (Laughter) [LB902]

SENATOR SCHIMEK: Mine is rather a personal kind of question in a way, because I happened to be prescribed something two days ago, took the first pill that night, and had a terrible reaction. It scared me to death. I went to my regular family physician this morning, who is not the one who prescribed it, and told her about that reaction. And she agreed I should probably not take the drug again. But my question is, does my family physician then report any of those kinds of incidents to anyone? [LB902]

ROGER KACZMAREK: Probably not. We should...in the hospital setting, we are mandated by a national group to report that. That's a problem. I used to work in a cancer clinic the last four and half years. And that community was very good about responding when (recorder malfunction) because we had a very small group of patients that we were working with. And when they did trials on those drugs, they worked with even a smaller group than you would, say, with a general pharmaceutical drug, whether it's an antibiotic or an analgesic or whatever it may be. It's just difficult to get people in the community--healthcare providers, pharmacists, physicians, nurses--outside of the hospital setting to report these things. If we had a better mechanism, we might have a better handle on that and maybe that Vioxx issue, in that particular case, would have

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been handled differently. As far as your question about is there a way of predicting if you're going to have a bad reaction a drug--yes and no. If I know that you're allergic to penicillin and I give you an antibiotic that's similar to that, I would warn you and say you have to be careful with this because there's a small percentage of a cross-sensitivity to that kind of thing. But a lot of times if you had no allergies in your family, you've never had an allergic reaction to anything, the chances are physicians and healthcare providers are going to think you're okay kind of thing. But it's good that you report it. It's extremely important that you provide it to your healthcare provider and that stays with you so that if you go into a hospital or if you go anywhere, that that record is with you so you don't get that drug again. [LB902]

SENATOR SCHIMEK: Well, and she did say no drug in that family of drugs either. But I just... [LB902]

ROGER KACZMAREK: That's exactly right. And pharmacy software has the ability, and it's very important that any drugs you take, that you tell the pharmacist what drugs that you are allergic to because as we fill a prescription for you, we have a built-in software that will tell us if there's a potential allergy problem there. [LB902]

SENATOR SCHIMEK: I understand that. By coincidence, I went on-line in the middle of the night to find out about this drug when I had this reaction. And there were lots of personal horror stories about this drug. [LB902]

ROGER KACZMAREK: Well, now be careful of those chat rooms. (Laugh) [LB902]

SENATOR SCHIMEK: I know, I know. I'm not saying they were all authentic or that they were all, some of them not imaginary. But I wonder, is that the only way the public can get their story across? We're getting a little bit off subject here, but I'm just interested... [LB902]

ROGER KACZMAREK: No, but I think you bring up a valid point. Our job, as far as being on the Board of Pharmacy, is to protect the citizens of the state of Nebraska. That's our job. This is a volunteer job that we do. How can we do the best job that we can as far as the citizens in Nebraska being protected by not only pharmaceutical companies and drugs, but the whole gamut of the healthcare system? And the problem is it's getting very complex today. We were down here for several bills, you know, lobbying pro and con on some of these things. And it can be very frustrating sometimes because we're trying to help people and it feels like we're running into roadblocks sometimes. But the best thing...I'll make a comment to you. What I would like to see is the news media, newspaper, whoever, the state, Health and Human Services come out with programs that give instructions or explanations to people about their healthcare. Where do they get this? They get it from a friend. They may talk to a pharmacist. They may talk to a nurse. They may talk to a dentist, whoever. That's where a lot of people

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learn about their healthcare. We should have more than that. We need a better educational tool, not only for the healthcare providers but the people that are receiving healthcare in our state and throughout the country. [LB902]

SENATOR SCHIMEK: Well, I thank you for indulging me here a moment. I wish... [LB902]

ROGER KACZMAREK: It was a very good question. I appreciate you asking. [LB902]

SENATOR SCHIMEK: ...there were a better way for the public to maybe be listened to regarding some of these drugs. And I think one of your problems is the huge proliferation of drugs out there right now. When we were growing up and when we were in our teens and twenties, we didn't have all these options. And now there's so many options out there, it makes it more difficult, I think, for everybody. [LB902]

ROGER KACZMAREK: When I was in pharmacy school, I didn't have to memorize that many drugs. Students today, it's a killer job. [LB902]

SENATOR SCHIMEK: I'll bet. (Laughter) Thank you. [LB902]

ROGER KACZMAREK: Thank you very much. [LB902]

SENATOR ASHFORD: Yeah, I...Senator Chambers. No, go ahead. [LB902]

SENATOR CHAMBERS: I probably shouldn't expose this but... [LB902]

ROGER KACZMAREK: Go ahead. [LB902]

SENATOR CHAMBERS: ...Senator Schimek's horrible reaction was that she thought she had died and her impression had always been that she was going to go to heaven but when she...(Laughter) No, really, when she got where she was going, I was the gatekeeper and that's what scared her. (Laughter) [LB902]

SENATOR SCHIMEK: You know, Senator Chambers, the horrible reaction was--I'll divulge this--I had the most incredibly awful nightmares I've ever experienced in my life. And so you hit it right on target. [LB902]

SENATOR CHAMBERS: I know. (Laughter) I knew what I was talking about. [LB902]

SENATOR ASHFORD: Keep on going if you feel you must. [LB902]

ROGER KACZMAREK: You know, you could make a good TV show. There's a lot of openings right now. [LB902]

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SENATOR ASHFORD: I just want to make...are there any other testifiers on this bill, by the way? Before you go, Roger, I do want to make a comment. And I think this has been an excellent hearing. When I ran the Housing Authority, to give you an indication of what our independent pharmacists do in this state, when I ran the Housing Authority when the flu vaccine issue hit a couple years ago and we had a lack of flu vaccine, we had, I think, 8,000 children who live in significant poverty in Omaha. And it was the independent pharmacists that stepped up and provided as they could the flu vaccine on site for, in many cases, to the children who would not have had it in an expeditious way. So I don't know if you played a role in that or not, but certainly your colleagues did, so I appreciate that and that effort. So I think there is a great value in having independent pharmacists or pharmacists generally and that we have two great schools here, don't we? I mean, we have... [LB902]

ROGER KACZMAREK: Well, we have Creighton. [LB902]

SENATOR ASHFORD: Creighton, yeah. (Laughter) [LB902]

ROGER KACZMAREK: And the other school, of course. [LB902]

SENATOR ASHFORD: I don't know where that is. Maybe it's in Kearney. Anyway, thank you, Roger. [LB902]

ROGER KACZMAREK: Thank you very much. [LB902]

SENATOR PANKONIN: If I may come up for just a brief closing, Chairman, I also think it was a good hearing and I just thought of a couple things that I want to mention after hearing the testimony. Number one is, as we all know when bills get brought around that we take a look at, and I had worked with the pharmacy groups on a pharmacy technician bill that was rolled into some other legislation. And like this one, I felt the pharmacy industry locally was looking to self-regulate and actually do more. And the thing that attracted me to this bill in particular, because I didn't know as a layman about the strengths of these drugs, was the fact that they wanted this annual count versus the biennial count. They wanted to extend that count to all five schedules instead of I and II. So to me it seemed like we were trying to get better control of these. But the personal aspect for me is that many of you know my wife Lori, and in the fall of 2001 her...she's the oldest of five, but her brother who was 46 years old had...he was a large animal veterinarian in Kingsley, Iowa, had a back problem and was under a lot of pain and he was given OxyContin. Took one dose, laid down for a nap, and didn't wake up. It killed him, the reaction. So these are serious medications and they can have not only dependence issues but, as Senator Schimek has said, can have adverse reactions that are...in this case was very tragic. Thank you. [LB902]

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SENATOR ASHFORD: Thank you, Senator Pankonin. It was an interesting hearing. Okay. Last hearing I believe is LB840. Oh, Senator McDonald. [LB902]

SENATOR McDONALD: One of your own. [LB840]

SENATOR ASHFORD: Yes. [LB840]

SENATOR McDONALD: (Exhibit 12) Mr. Chairman and fellow members of the Judiciary Committee, I am Senator Vickie McDonald representing the 41st Legislative District. I'm committed to the safety and security of Nebraskans and that is why I bring LB840 before you today. According to the 2007 Monitoring the Future Study by the Office of National Drug Control Policy, 19 percent of 8th graders, 35 percent of 10th graders, and 46 percent of 12th graders reported using an illicit drug within their lifetimes. LB840 deals with the drug Salvia divinorum. Adults may not be familiar with this drug, but kids in high school and college know about it. There are currently 302 videos available on YouTube alone under the heading Salvia divinorum. A quick Google search including the words Salvia divinorum brought about 1,820,000 results, the Web sites including 43 videos of people getting high on this drug and 191 sites where the drug can be purchased. Salvia divinorum is an emerging threat to the drug culture. Its active ingredient is Salvinorin A. Salvia divinorum is a perennial herb in the mint family native to certain areas of Mexico, but it will grow in other places, including Nebraska. Salvia divinorum is not the perennial grown in flower gardens. It is an intense hallucinogenic. Depending on how the drug is taken into the body, whether it's chewed or smoked, the effects can be felt within a time frame from 30 seconds to 10 minutes. The hallucinogenic effect lasts approximately 30 minutes. Smoking or chewing Salvia divinorum gets people high. It can also cause a very bad reaction in some users--a bad trip with the potential to harm others and themselves. Salvia divinorum is not included in the statistics I mentioned because it is not illegal. It is easily and readily available right now in Nebraska and widely available on the Internet. A local television reporter was able to purchase a bag of Salvia divinorum here in Lincoln on January 7 for \$40. I want to change that. LB840 would add Salvia divinorum and Salvinorin A to Schedule I of the Nebraska Uniform Controlled Substance Act. It puts Salvia divinorum on par with psychedelic mushrooms, peyote, and LSD. According to the Office of Diversional Control within the Drug Enforcement Administration, neither Salvia divinorum or its active ingredient, Salvinorin A, has an approved medical use in the United States. Under LB840, possessing it would be considered a Class IV felony with a penalty of up to five years. Trafficking the drug would fall under a Class III felony with up to 20-year penalty. Legislation similar to LB840 has been passed in Delaware, Illinois, Louisiana, Maine, Missouri, North Dakota, Oklahoma, Oregon, Tennessee. These nine states have made the drug illegal. It's time to add Nebraska to that list. Internationally, Salvia divinorum and Salvinorin A are regulated in Australia, Belgium, Denmark, Estonia, Finland, Italy, Spain, and Sweden. I also have a technical amendment that puts the active ingredient, Salvinorin A, on a separate line in the list. This amendment was

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recommended by the Nebraska State Patrol. Please join me in supporting LB840. Thank you for your consideration. And I'm going to pass out the technical amendment. [LB840]

SENATOR ASHFORD: Any questions of Senator McDonald? Senator Chambers. [LB840]

SENATOR CHAMBERS: Not a question. It seems to me that there might be a hysteria developing about this drug like there was about crack and they think that by imposing these humongous sentences on people they're going to make a difference. And especially when a drug or any substance is used by young people, I don't think heavy sentences will work because they're going to do it anyway. You catch those who are easy to catch. And in the same way that crack was used by law enforcement to go after black kids and black adults, I think this kind of activity could go in the same direction. So I'm not really sympathetic to the approach being taken by this bill, even though the drug may be something that needs to be looked at. I think there are far more problems suffered by young people in this society through alcohol. But the ones who want to make this illegal and give you 20 years drink alcohol, so it's not going to be treated the same way. The question I would ask is this after all of that. Have young people been dying as a result of using this drug, if you know? [LB840]

SENATOR McDONALD: You know, I don't know. I did pull the information up on the Internet and I think that in trying to recollect what I remember, there were five stages of using this drug anywhere from, you know, a small reaction to even death. But I have no, you know, statistics saying what percentage have died from it. It's just as a reaction, as in anything, we don't know if we're going to have a reaction to it. [LB840]

SENATOR CHAMBERS: And, Senator McDonald, the question put to you is just to alert others who might come as to what I have an interest in and then they can direct their testimony and answer my question if they have it. Thank you. That's all I have. [LB840]

SENATOR McDONALD: Thank you. [LB840]

SENATOR ASHFORD: Thank you, Vickie. Corey. [LB840]

COREY O'BRIEN: The Attorney General said I wasn't working hard enough for my money so he sent me back down. (Laughter) Good afternoon, Mr. Chairman and Senators of the Judiciary Committee. My name is Corey O'Brien and I'm a prosecutor with the drug and violent crime division of the Nebraska Attorney General's Office. Today it's my pleasure to testify in support of LB840 on behalf of three organizations, those being the Nebraska County Attorneys Association, Nebraska's Chapter in the National Alliance of Drug Endangered Children, and, of course, the Nebraska Attorney General's Office. Having spent the last ten years of my career as primarily a drug

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prosecutor, I can tell you the drug culture is as apt to change as quickly as Nebraska's weather. While one minute we are inundated with crack cocaine, the next it's methamphetamine by the truckload. Just as we have done in our fight against methamphetamine, we in law enforcement must be willing and able to adjust to the ever-changing tides in the drug culture. LB840 is a bill aimed at stopping such a tide before it can flood the village. In particular, LB840 is designed to stop the proliferation of Salvia divinorum as quickly as it emerged onto the drug scene. One only need log into the Internet to see how fast and furious the Salvia craze has enveloped that scene. Through a simple Google search on the topic of Salvia divinorum, one can almost instantaneously be linked with more than one million sites devoted to this drug, many of which are dedicated to its sale at rock-bottom prices. Perhaps even more disturbing is the fact that this drug is being marketed to kids and young adults and is not only being made available via the Internet, but in many local Nebraska head shops and tobacco outlets. While some might argue with the propriety or necessity of Salvia's inclusion in the list of banned substances that comprise Nebraska's Controlled Substances Act, I and other prosecutors and colleagues in law enforcement are firmly convinced that Salvia divinorum poses a real health and safety threat to Nebraskans and should be banned from sale, possession, and consumption. As Senator McDonald so eloquently elaborated on earlier, Salvia divinorum is a potent, hallucinogenic that is commonly sold in varying strengths and potencies. It is commonly smoked in a fashion similar to marijuana and produces almost instantaneous psychic effects, including perceptions and bright lights, vivid colors and shapes, as well as body movements and body or object distortions. Additionally, it commonly produces adverse physical effects, including incoordination, dizziness, and slurred speech. Scientific studies show Salvinorin A, the chief by-product produced through the consumption of Salvia divinorum, is a potent and selective kappa opiate receptor agonist that is similar to numerous other hallucinogenic drugs already outlawed in Schedule I such as psilocybin mushrooms, LSD, mescaline, and peyote. While this is significant in and of itself to justify its inclusion in Schedule I, the greatest fear myself and my colleagues in law enforcement is that Salvia divinorum will become a sort of gateway drug that encourages and entices young people to experiment with even more harmful psychedelic drugs such as PCP. Based upon the factors I just mentioned, 9 states have passed legislation since 2005 banning Salvia divinorum and they are why similar legislation is pending in at least 15 other statehouses even as I speak today. Rarely do we in law enforcement have an opportunity to stop a drug threat before it becomes an epidemic, but LB840 presents us that opportunity today. Therefore, I'm asking for your support on behalf of the three organizations I speak for. Thank you and I would appreciate any questions you might have. [LB840]

SENATOR ASHFORD: Senator Chambers. [LB840]

SENATOR CHAMBERS: It was law enforcement that created the crack problem. And although people say crack is a black people's drug, more white people than black

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people use crack. It just happens that more black people are prosecuted for using crack and given those harsh sentences. But there's no drug which is predominantly used by black people because there are not enough of us to make the drugs as lucrative as they are. So for those who did not know, and there have been articles, but people ignore things like this, more white people use crack than black people. They're just not prosecuted. Now when we come to the sentencing structure in this bill, did the Attorney General's Office have anything to do with that? [LB840]

COREY O'BRIEN: I wrote the bill so, yes. [LB840]

SENATOR CHAMBERS: And tell me then what the sentencing structure is. [LB840]

COREY O'BRIEN: The sentencing structure for any Schedule I substance other than marijuana is that it be classified for simple possession of a controlled substance to be a Class IV felony. [LB840]

SENATOR CHAMBERS: And what is the punishment? [LB840]

COREY O'BRIEN: The punishment ranges from 0 to 5 years. [LB840]

SENATOR CHAMBERS: So we could increase the number of people in prison who had not even used the drug itself but simply possessed it, correct? [LB840]

COREY O'BRIEN: That is correct. [LB840]

SENATOR CHAMBERS: Okay and you can proceed. [LB840]

COREY O'BRIEN: Theoretically. [LB840]

SENATOR CHAMBERS: Yeah, that's right. [LB840]

COREY O'BRIEN: In terms of the other penalties, then anybody that's caught trafficking in the drug would face a penalty of up to 1 to 20 years. They do have the possibility of getting probation, but that would be classified as a Class III felony. [LB840]

SENATOR CHAMBERS: And that could increase the number of people in prison. [LB840]

COREY O'BRIEN: Theoretically, yes, sir. [LB840]

SENATOR CHAMBERS: Okay. Any others? [LB840]

COREY O'BRIEN: That's the extent of the penalty structure. [LB840]

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SENATOR CHAMBERS: Have you heard all of this discussion and even the formulation of committees to find a different way to deal with nonviolent drug offenders than by putting them in prison? [LB840]

COREY O'BRIEN: I have and I am in support of all of them. [LB840]

SENATOR CHAMBERS: And this will go counter to that, wouldn't it? These could be nonviolent drug offenders who would swell the prison population if as many young people are using this drug as we're told. Correct? [LB840]

COREY O'BRIEN: Theoretically, yes. And, Senator, if I might, I mean the people that I'm most adamant as a prosecutor to go after are the people that are preying on people's addictions and selling this drug to...I, you know, I helped to establish the first drug court in Douglas County when I was a prosecutor there. I'm adamantly in agreement that treatment is a fabulous option that we have available to us. And I wish we had more of those resources available to us as a prosecutor. [LB840]

SENATOR CHAMBERS: But, Mr. O'Brien, I know black people who have been sentenced far more harshly on drug crimes in Douglas County than white people. They're even prosecutors, if they're honest, who will tell you and so will judges. But here's the question I want to put to you. Are you aware of any young people using this substance in Nebraska? [LB840]

COREY O'BRIEN: Am I aware of any personally? [LB840]

SENATOR CHAMBERS: No, not individuals. Are you aware of...I should have phrased it by saying are you aware that young people are using it in Nebraska? [LB840]

COREY O'BRIEN: Law enforcement intelligence indicates that they are using it, and I have been informed by high schools that they are finding it in high schools. And that's one of the reasons why I brought it to the Attorney General's attention. [LB840]

SENATOR CHAMBERS: Are they using it on university campuses? [LB840]

COREY O'BRIEN: That is also my intelligence tells me they are. [LB840]

SENATOR CHAMBERS: How many young people have died from using this substance that you're aware of, anecdotally or otherwise? [LB840]

COREY O'BRIEN: From what I gather from all the research that I've done on the Internet, largely on the Internet as well as medical journals that I consulted, there is one known case of an individual that actually died as a result of a psychotic episode that he

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experienced as a result of taking Salvia divinorum in Delaware. And it wasn't a direct result of the substance itself, but the hallucinogenic images that were conjured up in his head as a result of a psychotic episode that caused him to commit suicide. [LB840]

SENATOR CHAMBERS: Have you read of large numbers of young people on college campuses, sometimes even of high school age, who have died as a result directly of binge drinking alcohol? [LB840]

COREY O'BRIEN: Absolutely. [LB840]

SENATOR CHAMBERS: Then why don't we make alcohol a banned substance since it is killing young people, it can be a gateway drug, and it is used in combination with other drugs? Why don't we ban alcohol? It's not politically feasible, is it? We're going to ban... [LB840]

COREY O'BRIEN: I wish I was a politician. I could answer that but, you know. [LB840]

SENATOR CHAMBERS: We're going to ban something which has killed nobody. But we're going to allow something and even encourage its use when it is known to result directly in death, and people abuse it and drive cars and kill a lot of people, injure a lot of people. Families are broken. Some children come into the world addicted to alcohol. But we don't treat alcohol that way, but something like this is going to result in the possibility of these heavy prison sentences. What kind of policy statement are we making--this is a hypothetical question then I have one I want to ask you--when we allow and not only allow it but when my colleagues go to various functions, I don't go to any of them, but they always talk about happy hour, a social hour, bring your own flask and things like always alcohol has to be there? Then I, who am a teetotaler, I don't smoke cigarettes, don't drink alcohol, sit here and listen as attempts are made to do what you're attempting to do. Now here's my question. If you could give any speculative number, how many pushers of this substance would you say there are in Nebraska or would that be too speculative? [LB840]

COREY O'BRIEN: I don't think that I could even begin to estimate, Senator, simply for the fact of this explosion, if you would, of Salvia divinorum has just caught us completely off guard. Us in law enforcement, I don't even think that in rural jurisdictions they even know of its existence yet. [LB840]

SENATOR CHAMBERS: And you can get it other than in Nebraska itself. You can get it from other sources into Nebraska, I think somebody mentioned tobacco shops. How many people are going to be prevented from using this substance if we do what this bill is asking us to do? [LB840]

COREY O'BRIEN: I hope all of them. [LB840]

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SENATOR CHAMBERS: How many young people are deterred from drinking alcohol because they can be ticketed and maybe spend some days in jail? We still have way too many young people and older people using alcohol. Do you really believe that the imposition in the statute books of a harsh sentence deters people from engaging in these kind of activities? [LB840]

COREY O'BRIEN: I believe it affects some. [LB840]

SENATOR CHAMBERS: If we told young people who might be using it in a high school that if you use this and get caught you're going to be guilty of a Class IV felony and you may go to jail, you think that we'll see...now maybe initially there might be a diminution or that people would be more careful and cautious? I just don't see where this that we're doing is going to stop anything, but it's going in a direction I don't really favor. And I think this drug, this substance, is different from the other drug we talked about because we were talking about a drug produced by pharmaceutical companies that is being made available and it is used for medicinal purposes and all that. There are a lot of things with reference to that drug which distinguish it from what we're talking about here. But I just want you to know that I'm not convinced on this one yet, but I'm not critical of you for coming here with it. [LB840]

COREY O'BRIEN: And, Senator, if I might, I listened to the previous discussion. I think the thing that's most convincing to me about why this drug should be put on Schedule I is that it serves no purpose whatsoever other than to harm our children. It has no medicinal qualities that anybody has been able to define. I've consulted medical journals. They, quote unquote, say it has the potential just like any substance has the potential someday to produce medical benefits. But as of right now, it produces absolutely none and they've been researching this Salvinorin A for years and years and years. [LB840]

SENATOR CHAMBERS: Did you read a column or an article where Sylvester Stallone said hGH or that human growth hormone is of great value, especially to men over 40 because it gives such a great sense of well-being that he thinks in ten years you can get it over the counter? He used it to buff up for his most recent Rambo film. So if we're going to talk about the messages given to young people and you see him on the screen--he's not that good an actor in my opinion and the movies are bloody--but young people might just see somebody making a lot of money, a movie star, and he uses hGH. Now Barry Bonds, Marion Jones, Roger Clemens may go to prison, not for using it but for lying about using it. And then they know that they can use alcohol. I think we ought to stop talking about sending messages to young people because there is no real message. It's who you are. It's whether an outfit you're connected with is making money from it that makes it all right. And if the right people are using it, it's all right. And if certain people use it in the public eye, they go to jail and get kicked out of their sport

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and others like Stallone blow up, wrestlers, and make a lot of money and are famous. If you could give me the strongest argument possible, would it be that in your view it's going to harm young people who, for whatever reason, are shown all these things on the Internet and so forth and they want to use it? Would that be the strongest argument against its being allowed to be unregulated? [LB840]

COREY O'BRIEN: It would be among the strongest arguments. And I understand the hypocrisy that you see and sometimes it infuriates me as well as a prosecutor to see that as well. [LB840]

SENATOR CHAMBERS: And that argument is alluring to me, but it hasn't completely convinced me yet because we'd be adopting a policy. And I think the policy, if I may quote Elmer Fudd, would have to be considered "skwoowy" in view of all the things we let slip by. That's all I would have. Thank you. [LB840]

COREY O'BRIEN: Thank you, Senator. [LB840]

SENATOR ASHFORD: Thanks, Corey. [LB840]

COREY O'BRIEN: Thank you. [LB840]

SENATOR ASHFORD: Colonel. [LB840]

BRYAN TUMA: (Exhibit 11) Again, good afternoon, Senators. My name is Colonel Bryan Tuma, B-r-y-a-n T-u-m-a. I serve as the superintendent of the Nebraska State Patrol, and I'm here today to speak in support of LB840. In August 2007, the Nebraska State Patrol Drug Division began receiving telephone calls from concerned parents about Salvia divinorum. The investigators were unaware of the substance at that time and the reporting parents indicated that their teenage children were openly using this herb and bragging about its effects and the lack of any legal consequences relating to the purchase or the use of Salvia. Many young people share their views with the world by recording their experiences using Salvia and posting these videos to various Internet sites. Users appear to be mostly adolescents and young adults influenced by promotions of the drug on Internet sites. And this is also the case with users in Nebraska. The State Patrol Crime Lab has received inquiries regarding this substance and the ability of law enforcement to enforce any current law relating to Salvia. Not only have these questions been asked by other law enforcement entities, but drug treatment providers, concerned parents, and also an owner of a head shop store here in Lincoln to determine whether Salvia was illegal to possess or sell. Our investigators have observed Salvia being sold in local retail stores in Nebraska. Salvia divinorum and Salvinorin A are not currently controlled under the federal Controlled Substance Act. However, since 2005 a number of states have placed controls on Salvia divinorum or Salvinorin A. Approximately nine states, including Missouri, Illinois, Oklahoma, and

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North Dakota, have now passed legislation controlling the sale, purchase, and possession of this hallucinogen. Nearly a dozen more like Nebraska have legislation pending. Some of these states include Iowa, Ohio, and Wisconsin. Internationally, Salvinorin A or Salvia divinorum have been placed under regulatory controls in Australia and Europe. Although the State Patrol's experience with this substance is relatively new, it's become apparent that the substance is available for sale and is being used for its hallucinogenic effects in the state of Nebraska. It is a dangerous substance that should be regulated in order to reduce the abuse of this hallucinogen by our young people. And I would encourage the committee to advance LB840 to General File and assist law enforcement with the mission that we share and that's to protect our citizens. I would answer any questions you might have. [LB840]

SENATOR ASHFORD: Colonel, I just...Senator Chambers... [LB840]

SENATOR CHAMBERS: No, I don't have any questions. [LB840]

SENATOR ASHFORD: Colonel, again, I just would like to maybe make a bit of a point here. Again, to me...going back to the meth issue for a moment. The meth was produced here for a while before we acted because it took a while for us to understand the gravity of it. And then once a number of people in our communities in Nebraska became hooked on it, it became a buyer really internationally because meth was shipped...we were one of the top five states that received meth from other sources, including Mexico and Central America. Is that generally correct? [LB840]

BRYAN TUMA: Yes. [LB840]

SENATOR ASHFORD: And you're charged with the responsibility here in Nebraska, along with other law enforcement, to help eradicate that problem. [LB840]

BRYAN TUMA: Yes. [LB840]

SENATOR ASHFORD: Whether it's on the interstate system or out in the communities or rural areas and the cities or whatever. [LB840]

BRYAN TUMA: Yes. [LB840]

SENATOR ASHFORD: And again, and those are drugs that come to Nebraska from somewhere else. They're shipped here and Nebraska was a...the more I read about that and last year it became an acute issue and the year before that, it seems like again we're being asked and you're being asked to do an almost impossible task and Corey is being asked to do an almost impossible task which is to apply rational, reasonable law enforcement measures to problems that come into our state from outside our state. Isn't that a fair...? [LB840]

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BRYAN TUMA: Yes. [LB840]

SENATOR ASHFORD: And quite frankly, and you don't have the resources really to do that. I mean you're stretching your manpower and your ability to do that effectively. [LB840]

BRYAN TUMA: That's correct. [LB840]

SENATOR ASHFORD: And now we have legislation here that's asking you to do, for example, to do...to go find illegal immigrants and send them back to where they came from or give them to somebody else to send them back. At what point do you...is it...are you going to be unable to do your job in any rational way? And that's an unfair question, but it's a rhetorical question. But I think the person on the street, the citizen on the street wants to feel secure and safe. That's unquestionable. But you're being asked, you and Corey and others, are being asked to do what I think to be the impossible, which is to solve all of society's problems that not only originate in our state, but originate in other places and come into our state. And the federal government continues to fail to do anything reasonable to solve it. So I guess that's not a question. But I do respect what you're trying to do and what Corey's trying to do. And I don't know what that means that we do about this bill. But it is one of another series of bills that are asking your overly stretched crew to solve for us because of the failure of the federal government to act. So with that, thank you. [LB840]

BRYAN TUMA: Thank you. [LB840]

SENATOR ASHFORD: That's all, Colonel, thanks. [LB840]

BRYAN TUMA: Okay, thank you very much. [LB840]

SENATOR ASHFORD: Any other proponents? Opponents? Opponent. [LB840]

STEVEN GLASER: Senators of the Judiciary Committee, my name is Steven Glaser and I oppose this bill for a few reasons. First of all, it wants to schedule the drug as...not everybody wants to have a schedule and wants to make Salvia a Schedule I drug. And by definition, a Schedule I drug must fit three criteria. One is that it must have a high potential for abuse; two, it must have absolutely no medicinal uses; and three, it must be a dangerous drug. Now research that has been conducted on the drug as far as the toxicity and also the addictiveness of the drug have shown that the toxicity is completely innocuous. It is actually not there. Professor Briner, who is one of the professors at UNK who did the toxicity research, actually told me over the phone that he has not ever been able to kill an animal. And he gave doses to animals that are thousands of times higher than what would be necessary for a human to hallucinate. And it was completely

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impossible for him to actually kill an animal. Not just that, he was doing it chronically. He did it every day for two weeks. And when they did necropsies on the animals, they found absolutely no damage to the organs. The only effect that they noticed physically was the fact that pulse had increased slightly. Another thing is it is...I would say that it has no potential for abuse really or definitely not a high potential for abuse because, in psychological studies that have been done and published, only .6 percent of users have ever said that they have actually said that they have had a craving for it after they had done it. Now I don't know what you think, but I would say that is not really very addictive whatsoever. Another thing is it is not a party drug. People who use it don't like to do it in the presence of large groups of people so it's not likely to proliferate. And it is also a drug that some users say they would prefer not to do again because it's just so intense. Another thing is now getting back to the fact that there are no medicinal uses for it. That is true. But Salvinorin A was not actually isolated until 1984. The research that has actually been done in humans is none. Only animal studies have ever been conducted. It is not...currently the FDA has not approved it for human use and no IRB review board would ever approve something that the FDA has not approved. So we don't know about the medicinal uses for it. But there are a lot of potentials. One is the fact that it acts on the kappa opioid receptors in the brain, which are the same receptors that pharmaceutical drugs that are meant to cure heroin addiction and other addiction to hard drugs actually target. And so there is the potential that this could be a drug that could cure addiction to much harder drugs. And so with the fact that only .6 percent of people have ever claimed that they wanted to do it again, like actually had a craving for it, and since it has such a low addiction potential, I think that that would be an avenue that would definitely need to be looked into because current pharmaceutical drugs that actually try to cure those addictions have high addiction rates themselves. So then people require those drugs, which isn't really very useful most of the time. Another thing is that law enforcement cannot actually enforce this law. There is no way for it to enforce this law. And the reason is because it is such a potent drug because the quantity actually necessary is...once it is in your body, it is below the detection limits of almost all of our technology. And there is no drug test that has ever been conceived of that can test for the metabolites of this drug. Not just that, the plant itself is completely nondescript. It looks like mint. I mean come on, you can't really prosecute someone for that. And not just that, but it smells like many, many dried leaves. It smells like tea. So you can't do it based on sight, you can't do it based on smell, and you can barely detect it chemically. [LB840]

SENATOR ASHFORD: Any questions of Steven? Yes, Senator Schimek. [LB840]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Would it be rude of me to ask how you got interested in this and how old you are, for heaven's sake? [LB840]

STEVEN GLASER: I am 21 years old. [LB840]

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SENATOR SCHIMEK: And are you in school? [LB840]

STEVEN GLASER: Yes. I actually am a geology major at UNL right now. [LB840]

SENATOR SCHIMEK: And what brought your interest in this and brought you to the Legislature to testify? I think it's great, I want to say that. [LB840]

STEVEN GLASER: Well, I've always found drugs very fascinating because they do have a very high potential for uses because they can change the chemistry of our body. Some of them can cure very deadly diseases. But oftentimes people try to outlaw them without actually being informed about what they truly do. And I think that...I think illegal drugs especially have always caught my attention because many of them are actually not based on, you know, the reason that they're outlawed is not based on any dangers that have ever been scientifically proven. They're just based on anecdotal things or mainly it's just based on culture. You know, because in early 1900s when drugs started to be regulated by the federal government, you know, people thought that it would be wise to do because they thought that maybe there would be a potential for doing it. And then once we grew up in that culture, we just became accustomed to drugs naturally being outlawed. So then we have always tried to jump on every single drug to try and outlaw it for no reason. You know, and if you go back into the history, it is really fascinating, in my opinion, to find out that most of those laws in the early 1900s that were outlawing drugs originally are actually...were actually passed based on racial prejudice and ethnocentrism because they believed that they didn't want immigrants bringing in a new culture and trying to destroy the white culture of the majority in America. [LB840]

SENATOR ASHFORD: Well, opium certainly was. [LB840]

STEVEN GLASER: Opium was like that because it was brought in by the Chinese. And then marijuana, the reason that there was any impetus to actually try to outlaw that one was because of Mexican immigrants. Heroin was used by African-Americans, which, okay, they're not immigrants but... [LB840]

SENATOR ASHFORD: But it was used by African-Americans here. [LB840]

STEVEN GLASER: Right, yes, here. [LB840]

SENATOR ASHFORD: And how did that start? [LB840]

STEVEN GLASER: How did heroin... [LB840]

SENATOR ASHFORD: Or I mean how did that develop being used by African? [LB840]

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STEVEN GLASER: Well, originally, you know, heroin became very big in Harlem and people, you know, as a way to be able to...as with all the drugs that were illegalized in the early 1900s, people wanted to be able to control a certain group of the people. And heroin was just to control African-Americans. And later we found out that it is extremely addictive, so maybe there actually is a reason to make it illegal, but, you know, at the time there was no reason. It was just racial prejudice. I mean I don't know what your personal opinions about marijuana are, but, you know, from all of the medical journals that have published research about it, it has very little potential for being addictive, and it has a lot of medical benefit. But it was still outlawed just, you know, through custom. And I understand that, yes, it was brought up earlier that this is a psychoactive compound. It can make you hallucinate. But, well, you know what? So is caffeine. Caffeine is a psychoactive drug. In high enough doses, it makes you hallucinate too. So, you know, why aren't we jumping on something like that? For some reason we have a bias in our country about drugs that can potentially cause hallucinations. Mainly I think that comes from the cultural revolution of the 1960s with LSD. But, you know, a psychoactive drug that can make you hallucinate for maybe 15 minutes, how dangerous is that truly? Not just that, it does act on the kappa opioid receptors in your brain and it causes you to release endorphins and endorphins feel really good. You just feel happy and you laugh. So how is that bad, you know? [LB840]

SENATOR ASHFORD: Okay, well, that's interesting. [LB840]

SENATOR SCHIMEK: (Laugh) Thank you. I appreciate that. [LB840]

SENATOR ASHFORD: Thank you, Steven, for that information. Yes, Senator Chambers. [LB840]

SENATOR CHAMBERS: I respect people who respect language, who make good use of language and words, who speak in complete sentences, who don't punctuate their dissertation, their disquisitions with uh, um, you know, see what I mean, know what I'm saying. I liked your presentation and I'm not going to say more. But you did very... [LB840]

STEVEN GLASER: I think I was kind of stuttering. I'm kind of nervous, never done this before, but (laugh). [LB840]

SENATOR ASHFORD: Well, I'd like to hear you when you're not nervous. [LB840]

STEVEN GLASER: Well, I could talk about it for hours. [LB840]

SENATOR ASHFORD: You can go on for a long time? (Laugh) [LB840]

STEVEN GLASER: Because this is only a very, very brief introduction to all of the many

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reasons why it should not pass and why rather than making it a Schedule I drug we should probably just say 21 age limit just like alcohol. [LB840]

SENATOR ASHFORD: Well, you're welcome back any time, Steven. Any other questions? Thank you, sir. Thanks for coming. Any other opponents? Opponents? [LB840]

SCOTT FERGUSON: Hi. My name is Scott Ferguson, F-e-r-g-u-s-o-n, and I work at the university in Lincoln. This bill is being introduced by at least seven senators who accept campaign contributions from alcohol and tobacco companies that profit from the proliferation of addictive poisons. Instead of introducing bills aimed at holding these industries accountable for the death, disease, and countless abuses and miseries that their products facilitate, these senators have instead decided to focus their energy on criminalizing a species plant that is nonaddictive, has resulted in not a single documented emergency room visit anywhere in this country, and is considered invaluable by those of us who respect it as a visionary sacred member of this planet. I think it's important to note that the Attorney General used a Canadian YouTube video as supposed evidence of what Salvia can do. Salvia has been legally available in Nebraska for over a decade. And I don't know of even one negative incident that has ever been reported. Where are Salvia's victims other than in the imaginations of people watching YouTube videos and reading rehashed, sensational news articles? The cultural bias of this bill is blatant. Sentencing anyone associated with Salvia divinorum to prison terms is an insult to Mazatec culture and to the thousands of people in this country that have healthy relationships with Salvia. We've successfully obliterated nearly all indigenous culture on this planet and replaced it with our own brand of industrial civilization that floods us with advertising for alcohol, cigarettes, and toxic pharmaceuticals. Meanwhile, totally natural indigenous plants like peyote and Salvia are relentlessly demonized. I think it is one of our greatest unconscious fears that indigenous culture could in some way resurface, and we panic whenever we see glimpses of it, especially in young people. Today in Lincoln there are hundreds of people addicted to alcohol who have done all the paperwork and are on obscenely long waiting lists to get into rehab. Alcohol is legally advertised all around us, and thousands of Nebraskans profit from it, yet no one is held accountable for the destruction it causes. What motivates these companies to give money to politicians and, more importantly, why do they accept it? It was extremely irresponsible to introduce this bill, and it should be killed immediately to avoid any further embarrassment. And that's it. [LB840]

SENATOR ASHFORD: Any questions of Scott? Thank you, Scott. Neutral testifiers? Senator McDonald. [LB840]

SENATOR McDONALD: Well, this has been a very interesting hearing today. I think that sometimes when these issues come forward they...because it's a product that we haven't heard a lot about where we're not quite sure just exactly how people react to

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them, how much it's being used, how much it's being pushed, and so without that information, because it is so new, we're unsure what we need to do about this. What other states are doing, obviously they have reacted to it. Should Nebraska react to it? You know, I think that's for us to decide. But I think the concern is that if someone is under the hallucinogenic effects of this drug, you know, are they going to jump out the window, are they going to be getting in their car and drive away and have an accident? We don't know. And so I think that's something that we have to certainly consider when we're working with this. Like I said, maybe we're before our time. We don't have the information yet. But obviously, other states have felt that there was a need to regulate this and so that's why I brought this forward. It came from the AG's Office and I was willing to carry this for them and that's why I'm here. Thank you. [LB840]

SENATOR ASHFORD: Thank you. Thanks, Senator McDonald. That closes the hearing on LB840 and concludes the hearings for the day. (See also Exhibit 13.) Thank you. [LB840]

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Disposition of Bills:

LB735 - Held in committee.
LB840 - Advanced to General File, as amended.
LB902 - Advanced to General File.
LB930 - Held in committee.
LB957 - Indefinitely postponed.

Chairperson

Committee Clerk