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Judiciary Committee
January 22, 2009

[LB41 LB78 LB83 LB185 LB190]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 22, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB41, LB78, LB185, LB83, and LB190. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.
[]

SENATOR ASHFORD: (Machine malfunction)...a list of bills here, four, five bills starting out with LB41, involving county sheriffs. There's Lee. How are you? Let me introduce...we do have more than three members. But Senator Coash is here from Lincoln; and Senator Christensen is here; and Senator Lathrop. And I'm sure there will be others, but four is enough to get started. And Senator Rogert, Tekamah; LaMont Rainey is our legal counsel for the day; and Christina Case from Benkelman, Nebraska. How many are here from Benkelman other than Christina? Okay. Why don't we start out with LB41. And how many are here to testify on that bill? Okay. I guess, you know the rules so why don't we begin. [LB41]

MATT BOEVER: Good afternoon, Chairman Ashford. For the record, my name is Matt Boever, and that's M-a-t-t. Last name is Boever, B as in boy o-e-v as in victor e-r. And I'm in Senator Mike Flood's office who represents District 19. I'm here today on his behalf to introduce LB41 which makes two technical changes to Nebraska Revised Statute Section 29-4004, which is part of the Sex Offender Registration Act. First, this bill would strike redundant language on page 2 of the green copy. That's lines 23 and 24, by striking "county" in front of "sheriff." This change also makes references to sheriff...to the sheriff consistent throughout the statute. And secondly, on page 5, line 19, this bill clarifies language there as well. The statute currently reads in part, "Any person required to register shall notify the county sheriff in which he or she is located." And this bill would change that portion to read, "Any person required to register shall notify the sheriff of the county in which he or she is located." With that I'd like to thank the committee for its consideration of LB41 and be happy to answer any questions.
[LB41]

SENATOR ASHFORD: Well, I don't know...that was certainly a good introduction. But I don't know if it's going to stir a lot of questioning but there might be some. Any questions of Matt? Seeing none, thank you, Matt. And I believe that ends the hearing on this bill. That's a very short hearing. Welcome, Senator Council. [LB41]

SENATOR COUNCIL: Thank you, Senator Ashford. []

SENATOR ASHFORD: Now you were at the inauguration. []

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SENATOR COUNCIL: Yes, sir, I was. []

SENATOR ASHFORD: Did the bus...and the bus broke down? []

SENATOR COUNCIL: On the way out. []

SENATOR ASHFORD: On the way out. []

SENATOR COUNCIL: Nineteen miles outside of Omaha, we really got... []

SENATOR ASHFORD: Oh no. []

SENATOR COUNCIL: We really got a long way before we sat for four hours. []

SENATOR ASHFORD: Were you on time? []

SENATOR COUNCIL: Oh yeah, we arrived in more than ample time. And I just got off the bus after riding 25.5 hours. []

SENATOR ASHFORD: Oh my. []

SENATOR COUNCIL: So just glad to be here. []

SENATOR LATHROP: Did you get in? []

SENATOR COUNCIL: No. I was one of the fated purple ticketholders. []

SENATOR LATHROP: Really? []

SENATOR COUNCIL: There must have been...there were probably 25,000 to 30,000 people who had purple tickets who did not get in. []

SENATOR ASHFORD: So where did you watch it? []

SENATOR COUNCIL: I watched it from the rooftop of the Jones, Day Law Firm. []

SENATOR ASHFORD: Oh my. Well, anyway welcome, Senator Council. []

SENATOR COUNCIL: Thank you. []

SENATOR ASHFORD: It's a good story. Senator Lautenbaugh is here. Let's go onto, I guess, LB78. Senator Gay is here. This bill involves a deposit of inmate wages into the Victim's Compensation Fund. How many are here to testify on this bill? One person?

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Okay. Welcome, Tim. [LB78]

SENATOR GAY: (Exhibit 1) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Tim Gay and I represent the 14th Legislative District and I'm here today to introduce LB78. Under current law, up to 5 percent of wages earned by inmates now working for private businesses on the grounds of the state correctional facility may be deposited into the Victim's Compensation Fund. The intent of LB78 is to treat inmates still in custody of the department but who participate in a work release program the same to allow for 5 percent of wages earned by this sector of inmates to be deposited into the fund. I am aware that you have received a letter which is being handed out. So if you didn't receive it, you are right now, from the department regarding suggested amendments to the bill to ensure that its intent is carried out. And I'm fully supportive of these amendments. Why did I bring this bill? Not only is treating inmate wages equally good policy, I also personally believe our Victim's Compensation Fund is drastically underfunded. Up until fiscal year 2002-2003 the fund received a total of almost \$400,000 a year. This comes from a combination of inmates wages, General Fund appropriations, and a 60 percent federal fund match. Currently, the fund receives only around \$97,000 per year. This is due to a drastic cut in General Fund appropriations made in 2002, from \$210,000 a year to \$20,000 a year, which of course has also decreased the federal matching funds. Also, I'd say compared to other states we're very low in this fund. To give you an example of this, where the funding compares to, Iowa has a budget of \$8.7 million, and Kansas is at \$1.2 million. The purpose of the Victim's Compensation Fund is to pay for losses incurred by innocent victims of criminal activity. The fund helps those victims cover the costs of such things as mental health counseling, loss of wages due to incapacity and medical bills. And the fund also helps the families of victims with funeral expenses. The claims for the compensation involve crimes such domestic violence, sexual assault, child sexual assault, motor vehicle homicide, and homicide. Claims are determined by the Crime Victim's Reparations Committee and are limited to a maximum of \$10,000. Claims used to cover losses incurred for victims of assault but due to the lack of funds these victims are now being turned away from seeking any assistance. LB78 does not increase General Fund expenditures, it is not asking for more money from the taxpayers. It is garnishing a mere 5 percent of the wages of individuals who are incarcerated in a state correctional facility for committing a crime and helping the innocent victims recover from those crimes. I do want to note that the law states that if the funds are not sufficient to pay awards, the director of DAS is required to request an emergency appropriation from the Legislature to cover these awards. All the money in the fund to date is expected to be awarded. And I don't know how we would deal with this statutory requirement under the current budget situation. Due to the fact that this is a small fiscal impact, a representative from the Crime Commission will be testifying neutral but should be able to give you more detail about the current state of the Victim's Compensation Fund and its purpose. I will stick around for closing. And I did want to say just the reason we took on this fund is if we don't take some action we have to take some action. So this is an alternative that I felt

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was appropriate to bring to your attention, let you, in your wisdom, decide what to do. But it will require some action at some point. The fund has been declining in requests due to a lack of funds, period, because in the counties they don't steer anyone towards the fund knowing that there's hardly any money in the fund. But I think it is a shame and that's why I brought it to your attention. [LB78]

SENATOR ASHFORD: Thanks. Any questions of Senator Gay? We have heard in this committee quite a bit of testimony in the last couple of years about the condition of the fund and it really, I think, has been limited. And we'll hear more maybe about it. But it has been limited now to just a few offenses that are actually even compensated, so I know it's an issue. So I appreciate you bringing it to us. Senator Council. [LB78]

SENATOR COUNCIL: Yes, I do have one question. Senator Gay, I have a question regarding the exercise of the discretion that's granted both in terms of the bill as originally presented and the suggested amendment that we'll be getting into, Section 83-184 and it speaks to the director having the discretion authorized, the deposit, and the discretion of up to 5 percent. Who determines and what are the methods of determining who pays 5 percent or who pays less than 5 percent and when the director exercises his discretion and when he doesn't? [LB78]

SENATOR GAY: Yeah, Senator Council, on that one I think somebody from the department is behind me that could...we'll see if they can incorporate that. If not we will find out for you. Probably on the discretion I don't know this, but I assume it is the 5 percent and probably depending on the wages they are receiving for the work they are performing. But I don't know that for fact. But I'll make sure we get some information to you on that. [LB78]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for bringing this, Senator Gay. I just want to make sure I understand this. Currently, up to 5 percent can be taken from inmates wages if they're working for private businesses on the grounds of the prison, correct? So this will allow the same for inmates on work release? [LB78]

SENATOR GAY: Yes. [LB78]

SENATOR LAUTENBAUGH: And the fund is underfunded based upon the amount of claims we have or will have? [LB78]

SENATOR GAY: Absolutely, yes. [LB78]

SENATOR LAUTENBAUGH: So what is our choice if we don't do this? [LB78]

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SENATOR GAY: Well, the choice if you don't do it, it's not your choice, it's Appropriations' choice. And it hasn't run out of funds yet. But if it does, there is a...the way I understand it, there's a statutory requirement that it has to be funded. Because what happened, just in looking at the past history from 2002 to 2003, it was something to cut in those times. And, of course, just like anything when you cut it, as we've seen, it comes back kind of. And now we're seeing that this is an alternative. But, yes, 5 percent if you're doing...let's say you're doing laundry or you've toured the facilities, woodworking or whatever the case may be, if you're incarcerated get it. Now when you get out on work release they don't. What this is saying is, hey, you're getting the opportunity on work release, which is great and I'm supportive of that, to go out and earn a wage and get back into society and be, you know, do what you need to do. But what this is, is an alternative saying, well, you know, what we're giving you that opportunity in society, but also we still have these victims who are possibly still not compensated like they should have been. But like I said, on the other states when you look at other states what they do is through fees and court fees, which is always hard to do, through the court fees some of that money automatically goes there. Ours is just...hasn't been done that way and this is an alternative. And the fiscal note you have is a combination of two estimates. And I can get more detail on that, but it's two estimates of what it might generate. So... [LB78]

SENATOR LAUTENBAUGH: Thank you. [LB78]

SENATOR ASHFORD: Thank you, Senator. Oops, Senator Lathrop, and then Senator Rogert. [LB78]

SENATOR LATHROP: How much money do you think this will generate annually? [LB78]

SENATOR GAY: I think on the fiscal note, I don't have it in front of me, \$150,000. And, Senator Lathrop, we did check on that to see exactly how many people this might affect. And today, earlier, didn't get that information yet. But we'll be sure to forward it on to you along with Senator Council's question as well how they do that. [LB78]

SENATOR LATHROP: It seems like we were confirming some people to this board and they were actually borrowing money for the next year. And, yeah, they're in a bad, bad financial way. [LB78]

SENATOR GAY: Possibly could be, I don't know. [LB78]

SENATOR ASHFORD: It probably is not worth keeping it if we don't address it somehow. I mean... [LB78]

SENATOR GAY: Yeah, then the \$12,000, the \$15,000 is their estimate of changing a

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computer program, of course, to keep up with it. [LB78]

SENATOR LATHROP: Okay. That's all I had. Thanks. [LB78]

SENATOR ASHFORD: Senator Rogert. [LB78]

SENATOR ROBERT: Senator Gay, it mentions in here there's a federal funds match at about 60 percent we get. Is that something we're missing out on now? [LB78]

SENATOR GAY: Yeah, by cutting the General Fund appropriation we're giving up the match, so yes. [LB78]

SENATOR ROBERT: Thank you. [LB78]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: So for clarity sake if we bring in this additional 5 percent from the externally earned wages we'll get a match for that amount? [LB78]

SENATOR GAY: Yes. [LB78]

SENATOR ASHFORD: It matches the contribution. [LB78]

SENATOR GAY: It matches the contribution. But the main thing has been the General Fund went from \$210,000 down to about \$20,000 over the course of years. It's just an easy thing to cut and... [LB78]

SENATOR LAUTENBAUGH: But my point is the match wasn't just for the General Fund, it will match these dollars too. [LB78]

SENATOR ASHFORD: So it's matched dollar-for-dollar for...it's not? Okay. Okay. Well, we'll get it, we'll get it worked out. Whatever it is, it's a good,... [LB78]

SENATOR GAY: It's an alternative. [LB78]

SENATOR ASHFORD: ...strong idea, Senator Gay. We'll get the fill-in here, fill-in the gaps. Okay, good, good point. Thanks. Are you going to stick around and... [LB78]

SENATOR GAY: Yeah, I'll stick around a little bit. [LB78]

SENATOR ASHFORD: Thank you. Proponents? We kind of...you all know about the lights a little bit, don't you? There aren't a whole lot of people here today at this point. So we'll...we're still going to use the lights. But if you're in midsentence, we'll let you finish

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your sentence if that turns red. Okay? [LB78]

JAIMEE NAPP: (Exhibit 2) Okay. Thank you very much, Mr. Chairman, members of the committee, for allowing me to speak today in support of LB78. For the record, my name is Jaimee Napp, spelled J-a-i-m-e-e N-a-p-p, and I'm the founder and executive director of the Identity Theft Action Council of Nebraska. While Nebraska Crime Victim's Compensation Funds aren't available to the victims that our organization primarily helps, which would be financial crime victims, we believe strongly in the Compensation Funds purpose to offer the victims of crime assistance in their time of need. Speaking personally as a victim of crime, I am well aware of how deeply a crime can affect someone's life. And many victims, through no fault of their own, have found themselves in situations where they've been physically injured during the commission of a crime. The Compensation Fund is a last resort for these victims who have been overburdened with bills related to the crime. The fund was created with the belief and hopes that by offering a little financial assistance with these bills, medical bills and other authorized claims the victims can work towards making themselves whole again. But what has happened in recent years is the serious lack of funds has created an unintentional revictimization. Not only are victims victimized by the crime itself but financially victimized when injured. Ironically, when a victim's perpetrator is arrested their medical and legal needs are automatically paid for by the state. LB78 is a good step forward towards making the Compensation Fund functional and able to make the difference in many victim's lives. Thank you. I'd be happy answer any questions. [LB78]

SENATOR ASHFORD: Any questions? Thank you. [LB78]

JAIMEE NAPP: Okay, thank you. [LB78]

SENATOR ASHFORD: Okay. Any other proponents? Mike, are you here on LB78? Any other proponents of LB78? Neutral? We have neutral. Oh, opponents, I'm sorry, opponents. Sorry. [LB78]

LAUREL MARSH: Good afternoon, members of the Judiciary Committee. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm the executive director of ACLU Nebraska. And ACLU Nebraska appears in opposition to LB78, a proposal to remove a percentage of all inmates wages for deposit into the Victim's Compensation Funds. I want to tell you that we are not opposed to the purpose of the funds but we are opposed to the source of the funds. Our fundamental opposition is based on the Fifth Amendment. The proposed legislation is an unjustified taking, prohibited under the Bill of Rights. The takings clause, under the Fifth Amendment, prohibits the seizure of private property for public use. And while it is true that the Victim's Compensation Funds can be taken from some inmates, this should only be where a judge in a court of law has seen the cause and effect relationship between the crime, the victim, and the person who must pay. There should be some relationship between the crime committed and the requirement

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to pay for a stipend or portion of money into the victim's fund. Taking from all inmates, not just those with a court order directing them to do so, is unjust. Many people serving time are nonviolent offenders. There is no victim, and that might be especially true for people who are in prison because of different types of drug problems. I understand that there is some lack of clarity about exactly who would be affected, which categories of earners might be affected under LB78. And it's my general understanding that there are three different types of classifications of workers or employment that you might be in prison that the Correction Service Industries pays people somewhere between \$1.21 and \$3.78 a day, non-Correction Service Industries. That those who are lucky enough to work in service industries might make between \$3.04 and \$8.64 a day, and those on work release are paid perhaps between \$7 and \$9 an hour. You still have a requirement, if you have minor children and you're in prison, to pay up to \$50 a month in child support. And perhaps putting a burden of 5 percent or up to 5 percent of minimal earnings might interfere with your ability to meet your own financial obligations. So we would urge further review to find a good source of money to increase this fund. It has a laudable purpose, but that suggested under LB78 we hope you indefinitely postpone. [LB78]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Would it be proper for a judge to order compensation to a particular victim, in your opinion, as part of a sentence? [LB78]

LAUREL MARSH: I believe that there are different laws that allow for monetary damages in certain circumstances. [LB78]

SENATOR LAUTENBAUGH: Would it be permissible for a court to order a victim (sic) to pay into some fund that defrayed the cost of his incarceration? [LB78]

LAUREL MARSH: I would be pleased to look into that for you, but I'm not prepared for a good answer for you today. [LB78]

SENATOR LAUTENBAUGH: I guess what I'm getting at is if, and I believe that can be the case. If we then took money from that fund to put it in this fund, wouldn't we be accomplishing the same thing with two steps instead of one? [LB78]

LAUREL MARSH: I think that the cost of Corrections is one of the core missions of our state and as a core mission is something that is paid for by multiple sources. And if I were to...and so I do not have a good answer for your question. I would certainly try to...I see where you're going with this. And I think that that is...any time you're trying to rob Peter to pay Paul and you're not taking the direct attempt, you still don't...you still are left with the underlying problem of what is a just taking and what is not a just taking.

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And I can see where you might get from here to there. But I'm not sure it would be a good idea. [LB78]

SENATOR LAUTENBAUGH: Is it just not a good idea or is it a constitutionally and permissible idea, in your opinion? [LB78]

LAUREL MARSH: Sir, that I do not know. And I would hesitate to give you incorrect information. [LB78]

SENATOR LAUTENBAUGH: Thank you. [LB78]

SENATOR ASHFORD: Laurel, we did put a moratorium on child support running last year, as you remember. So we...this committee did support the idea that...of putting a moratorium on child support arrearages. Do you recall that? [LB78]

LAUREL MARSH: I do. [LB78]

SENATOR ASHFORD: Because you were here supporting it. [LB78]

LAUREL MARSH: I do. [LB78]

SENATOR ASHFORD: And, I guess, I would just follow up. If you do have any legal authority that would somehow address the nexus issue that you've raised, that would be...might be helpful. [LB78]

LAUREL MARSH: And with your permission, I will contact you or your staff later to make sure I have a solid question and try to get you a solid answer. [LB78]

SENATOR ASHFORD: Okay. But you raised the nexus issue. I mean, you... [LB78]

LAUREL MARSH: Correct. [LB78]

SENATOR ASHFORD: ...the individual defendant,... [LB78]

LAUREL MARSH: Correct. [LB78]

SENATOR ASHFORD: ...incarcerated person may have not committed a victim-centered crime or certainly didn't commit a crime that impacts a particular recipient of the Victim's Compensation Fund. And you're suggesting that maybe that nexus... [LB78]

LAUREL MARSH: It should...correct. [LB78]

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SENATOR ASHFORD: ...there needs to be a nexus. And, I guess, I'd like...I just need to know if there's any case authority for that, any legal authority for that. [LB78]

LAUREL MARSH: I will do so. [LB78]

SENATOR ASHFORD: Okay, thanks, Laurel. [LB78]

LAUREL MARSH: Thank you. And I'll make sure that you get the green sheet. [LB78]

SENATOR ASHFORD: Okay, okay. Any other opponents? Neutral? We knew you were coming, so... [LB78]

MICHAEL BEHM: (Exhibit 3) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Michael Behm, B-e-h-m. I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly known as the Crime Commission. I am here today to testify neutral on LB78. LB78 allows the director of the Department of Correctional Services to deposit up to 5 percent of inmate wages earned in work release programs into the Crime Victim's Reparation Cash Fund. The Crime Commission administers the Crime Victim's Reparations CVR program. We are supportive of the program and finding funds for the program; however, we must appear neutral because of a small General Fund impact. My understanding is that the Department of Correctional Services is working with Senator Gay to eliminate the General Fund impact. The Crime Victim's Reparation Program pays uninsured medical bills or funeral costs for innocent victims of violent crimes. It is a payor of last resort. Claims are paid only if the victim's insurance is inadequate to pay all the medical bills related to crime. Property losses are not reimbursed and guidelines for approving claims are strict. The maximum amount allowable for payment is \$10,000 per claim. The average amount of an approved claim is between \$3,000 to \$4,000. Historically, Nebraska's program approves 50 to 60 percent of all submitted claims. Every state has a crime victim's reparations program, and 41 states depend solely or primarily on the offender fees for funding their CVR programs. These include fees or fines on DWI convictions, parole fees, probation fees, and court costs. The only fee Nebraska's CVR program currently receives is a percentage of inmate wages from some correctional industry programs. Until 2002, the CVR program was primarily funded with \$210,000 of General Fund appropriation. The using...all states receive federal funds. The current General Fund appropriation is \$20,000 using a formula based on 60 percent of the General Fund and Cash Fund expenditures. For example, if a state expends \$100,000 in nonfederal funds, it will receive a federal award of \$60,000. To conserve funds, we have restricted our eligible claimants to victims from eight crimes, including homicide, sexual assault, child abuse, robbery, domestic violence, arson, drunk driving, and kidnapping. We no longer pay for assault claims. Again, the CVR program is a payor of last resort. It only pays after the victim's insurance has been depleted. Crime victims are a neglected part of our criminal justice system. They provide evidence and testimony

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which allows law enforcement to apprehend and prosecute the criminal. The CVR program is a small but important way to alleviate some of the financial burdens suffered by victims of violent crimes. It makes sense to have those who commit crimes pay a small amount into a fund that would be used to help crime victims. Thank you for your...thank you for my opportunity to testify today. I'll attempt to answer any questions. [LB78]

SENATOR ASHFORD: Any questions of Mike? Yes, Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: Thank you, sir. Briefly, why was assault dropped? [LB78]

MICHAEL BEHM: To eliminate...at the time when our monies were reduced, and this was prior to my becoming director, the committee, the board that oversees which claims are going to be acknowledged decided to remove assault, just to eliminate one less payment opportunity. [LB78]

SENATOR LAUTENBAUGH: So it was just because of...to conserve available funds? [LB78]

MICHAEL BEHM: Yes, sir. [LB78]

SENATOR LAUTENBAUGH: Thank you. [LB78]

SENATOR ASHFORD: And this would add around \$12,000? Is that what Senator Gay said, or maybe I misread, or is it more than that? [LB78]

MICHAEL BEHM: I don't have a figure in front of me, Senator. [LB78]

SENATOR ASHFORD: Okay. [LB78]

SENATOR LAUTENBAUGH: That's the cost. [LB78]

SENATOR ASHFORD: Oh, that's the General Fund cost. I'm sorry. [LB78]

LaMONT RAINEY: I think they could raise (inaudible). [LB78]

SENATOR ASHFORD: Oh, they could raise \$265,000. I guess that's...I don't have any other questions. [LB78]

MICHAEL BEHM: Thank you very much. [LB78]

SENATOR ASHFORD: Any other neutral testifiers? Senator Gay. [LB78]

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SENATOR GAY: Thank you, Senator Ashford, members of the committee. Very quick close. Learn something new every day and (inaudible). I will get back to Senator Council on anything or any of you, any other questions you have on this that was brought up. Couple of important things. I think if you're given the opportunity to do work release, you're at least minimum wage, they're going to take the 5 percent. So you've got an opportunity to go generate actually more income than if you were incarcerated. So to me giving an opportunity with a higher wage rate, so there is an opportunity there. I did highlight a couple of things Senator Lautenbaugh brought up. Some of the claims they've eliminated two-thirds of the claims. From 2002 to 2003 there's 190 claims, in 2008 there's only 62 because they had to eliminate assault. Again, I think this is just an alternative for your consideration and improvement as needed. And like I say, if we can get anything to you to help with that...but the bottom line on this one if this fund runs out of money the state law requires an emergency appropriation. And that has not been done yet. And I suppose if we get rid of the money that's fine. But I think this is a nice alternative for you to consider. And if there's anything we can do, myself or my office, to get you more information we'd be more than happy to do that. [LB78]

SENATOR ASHFORD: Thank you, Senator Gay. And we're not sure at this point how many people we're talking about. These are not individuals on probation. These would be individuals who are within the purview of the Department of Corrections but not probation? [LB78]

SENATOR GAY: Work release, work release,... [LB78]

SENATOR ASHFORD: But what about... [LB78]

SENATOR GAY: ...still under supervision. [LB78]

SENATOR ASHFORD: What isn't there...aren't there...there's nothing else other than work. What about community corrections, released into community corrections and...that's all right. We'll think about it. I just wanted to...be good to know how many, you know, how many people we're talking about that would be paying into the system, because \$265,000 is a lot of money. [LB78]

SENATOR GAY: Well, if there's any information, we'll continue to help you gather as much information. [LB78]

SENATOR ASHFORD: Okay, thank you. [LB78]

SENATOR GAY: I'll trade with Senator McGill back to Health Committee. She just left our committee, so. (Laugh) [LB78]

SENATOR ASHFORD: Interesting suggestion, Senator Gay. Obviously, it's an issue, so

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thank you. [LB78]

SENATOR GAY: Thank you all. [LB78]

SENATOR ASHFORD: Senator McGill has arrived and I think she came in after I...she is. So Senator Louden is here. We don't get to see him very often but glad to see him now. (Laugh) This would be LB185. [LB185]

SENATOR LOUDEN: (Exhibit 4) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is LeRoy Louden, it's spelled L-o-u-d-e-n, and I represent District 49. Today I bring before you LB185, a bill that affects presentence investigation of persons convicted of a felony. When a person is convicted of a felony a judge may order a presentence investigation before the sentence hearing. And this bill would direct the officer conducting the investigation to inquire whether or not the person convicted of the felony was a single parent with full custody of a minor child. If so, what were the custodial arrangements being made for that child while his or her parent was incarcerated. The idea for this bill first came to me after learning, through the news media, of the death of a child named Trista Peterson. Trista's mother, Jennifer Williams, had been incarcerated and Trista was ordered by the judge to stay with her father, Lucas Peterson. Lucas would never be charged in connection with her murder although he admitted to authorities that he was responsible and would serve very little prison time for a crime that had nothing to do with the death of his daughter. I have had conversations with several people involved with this case, including Judge Gless, to figure out the right way to protect a child who has an incarcerated parent. Trista was born in January of 2006. In October of 2006, Health and Human Services asked the court to establish Lucas Peterson's paternity and support for Trista. Trista had little to no contact with her father during her short life so far. Her mother was sentenced to prison for writing bad checks in December of 2006. In February of 2007, Health and Human Services filed suit against Lucas Peterson for payment of the hospital costs of Trista's death and a judgment was entered against Lucas. When Lucas was arrested in connection with that legal action it was discovered that Trista was missing. To make a very long sad story short, after questioning it was later discovered that Lucas had killed Trista and buried her in a shallow grave. When Jennifer Williams was sentenced to prison, why was no one concerned in what would happen to Trista and why Trista was placed in the custody of a father who had so little regard for her? The answer was because there were no previous charges of child abuse or neglect involving Trista and Lucas Peterson. There was already a link between Trista and the state of Nebraska and this link was not used as it might have been to review her welfare before her father received custody. Minor children should be in the safest possible environment. At a minimum, other family members should be notified when a person with custody of a minor child is incarcerated. The reason I introduced this bill is so that other children may be protected from the terrible fate that Trista Peterson had to suffer. I feel that the state has a responsibility to its children, and although a parent may be incarcerated for a

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crime, they should be allowed the right to know that their child is going to be safe and taken care of while they serve their time. This bill simply inserts into statute the specific task of looking after a minor child of a single parent that is going to prison. I would ask that you do the right thing probably in advancing LB185 to General File. And I thank you, Senator Ashford, and members of the committee. I would be happy to answer any questions that you may have. [LB185]

SENATOR ASHFORD: Thank you, Senator Louden. Any questions of Senator Louden? This seems like something that... [LB185]

SENATOR LOUDEN: This is something that I would, you know, it could either be worked in on some of our safe haven legislation or something like that. But this is something that I think needs to be looked at. I come from the old school that, you know, years ago we always thought when you threw somebody in jail, the county looked after their kids. But that went out 70 years ago or 50 or 60 years ago. [LB185]

SENATOR ASHFORD: You would not be remembering that. [LB185]

SENATOR LOUDEN: Yeah, I can. (Laughter) I can remember when there was a couple of people lived in one of these small towns that had a big family. And they went out and butchered some cattle mostly for something to eat. And they decided not to throw them in jail because they'd have to look after the kids anyway. So they gave them the meat and let them go. But that doesn't happen anymore. Everything is a little bit more rigid. But I would like to see something going along because this was a sad case over here at Seward where this happened. And it really didn't need to happen. No one was looking after that child when the mother was sent to jail for writing bad checks, for gosh sakes. I mean, you know, if she would...been something very serious, that's one thing. But this was something that really didn't need to be...happen. [LB185]

SENATOR ASHFORD: Well, it's a thoughtful proposal. Yes, Senator Council. [LB185]

SENATOR COUNCIL: Yes. Senator Louden, I applaud your objective here. And I've seen far too many cases of exactly what you've related to this committee occurring when parents are sentenced to incarceration and they have minor children. But the problem I have is that the presentence investigation report is...the intent of it is to provide information to the judge in terms of sentencing the offender. How do we make the link between the information that is developed during the presentence investigation to actually taking care of the child because the judge who is sentencing will not have jurisdiction over the child. So how do we make that connection through this legislation? [LB185]

SENATOR LOUDEN: Well, my intent is not so much to take care of the child but to decide that there is a child. And in your presentence investigation then that's what it's all

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about is what that person had responsibilities, is my understanding, before they were charged. By doing so, this way they would have a paper trail of some sort. If there was some place in the investigation that there was a paper trail, it could be turned over to the county attorney or whoever. And that's my understanding in most cases now is the county attorney many times looks after these cases. But there isn't any paper trail to whether you're going to turn it over to the Health and Human Services or someone with foster care or work or someplace along the line like that. I guess, that is...you're lawyers, you guys figure it out. (Laughter) But it has to...(laughter). [LB185]

SENATOR COUNCIL: Well, that's my fear, Senator. That link is still missing. I mean the information can be developed, the existence of a minor child needing care could be identified through the presentence investigation. But we have to have some mechanism, for lack of a better term, to force the county attorney to then make that connection to either Health and Human Services or the juvenile court, whomever is in a better position to take care of the child. But, I mean, but what this legislation is going to do, like I said, will develop the information. And I agree with you, that's something that should be a part of a presentence investigation report without the addition of this language. But the question is, how do we link that information to the people who have the authority and the ability to take care of the child? [LB185]

SENATOR LOUDEN: What do you do now? [LB185]

SENATOR COUNCIL: And that's just it, if it's not...if someone doesn't refer that child to Health and Human Services or place that child into the jurisdiction of the juvenile court, you have the situations like they're existing... [LB185]

SENATOR LOUDEN: Like we had. [LB185]

SENATOR COUNCIL: ...with what you have. So the issue, the problem is making the link to...the child to the services that that child will need after their guardian or parent is incarcerated. So actually, I mean, I don't disagree. I think probation officers ought to be developing this type of information when conducting any presentence investigation. But the question is, how is this legislation...if we pass this today, what is in this bill that's going to ensure that that child gets the services that he or she needs? And that's my concern. [LB185]

SENATOR LOUDEN: Then should there be some amendments to this bill that would... [LB185]

SENATOR COUNCIL: Or...or some companion legislation coming out of the Health and Human Services... [LB185]

SENATOR ASHFORD: Well, I mean, I... [LB185]

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SENATOR COUNCIL: ...or maybe here under Judiciary through the juvenile courts. But I think it's going to need additional legislation to achieve the ultimate objective, which I agree with you on. But I just don't know that this gets us here. [LB185]

SENATOR ASHFORD: Senator Lautenbaugh. [LB185]

SENATOR LAUTENBAUGH: Well, I think Senator Council is correct. But I don't think it's designed to get us all the way there. I interpret this as this would bring the circumstance to the judge's attention. And maybe he wouldn't send someone to prison for bad checks if there was no mechanism in place to take care of the child. [LB185]

SENATOR LOUDEN: Well, this is...as I talked to Judge Gless, he wasn't happy that we were going down this route because the thought everything was very good the way it was done. And my next question to him was, how the hell come we're digging this little girl up over there in Butler County then if everything was like it should have been. I mean this would be my next question when I was visiting with that. And this is kind of where we came about was to bring this attention that there is a minor child of this incarcerated person. And, I guess, it would be up to the judge to go from there. He's claimed that most of the time they would try to find family members so they didn't have to go into foster care and some of those like that. But that doesn't always happen every time. There isn't always family members available such as this time. There were family members, but they weren't...probably had the wherewithal to take on such a project. [LB185]

SENATOR ASHFORD: Yeah, is that, Senator Lautenbaugh? [LB185]

SENATOR LAUTENBAUGH: That's fine. [LB185]

SENATOR ASHFORD: I'd just let you go. But the...this is an issue that is a major issue, I think, that you have raised. And Senator Council is correct in that there needs to be some linkage. But, you know, we find over and over in this committee many, many cases where children of offenders offend. And there is a lot of data on that throughout the country, clearly Nebraska and other places. Maybe this is one of those trigger times, Senator Council, when we could do something. And maybe it is, as Senator Lautenbaugh suggests, maybe it's information the judge needs to have in sentencing. And that's, I think, very appropriate. But this could be one of these trigger places, these entryways into the juvenile system without having an offense by the child where there could be some intervention early on and maybe, you know, prevent that future problem. I think you've raised a great issue. Thanks. Thank you. [LB185]

SENATOR LOUDEN: Okay, well, thank you, Senator. [LB185]

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SENATOR ASHFORD: Are you going to stick around or... [LB185]

SENATOR LOUDEN: Depends on how many people come with their guns. [LB185]

SENATOR ASHFORD: Okay. How many proponents do we have for this? Opponents? Neutral? You win. (Laughter) [LB185]

SENATOR LOUDEN: Thank you. I appreciate the time. [LB185]

SENATOR ASHFORD: All right. Let's move to LB83, Senator McGill. [LB83]

SENATOR MCGILL: (Exhibit 5) Chairman Ashford, members of the committee, I'm Senator Amanda McGill. It's M-c-G-i-l-l. I represent the 26th District here in Lincoln. There's no question that any individual who is the target of domestic abuse or violence is in harm's way. Abuse can be physical or psychological in nature. While there is usually an intended target of this abuse there are also other victims that reside within the same household. These other victims are usually children or domestic pets living within the household. They are often used as control targets to keep the target victim from removing themselves from the abusive situation. Threats of violence or actual acts of violence against children and pets can paralyze the target victim from fleeing the relationship and seeking protection. Section 42-924 of the Revised Statutes of the state of Nebraska allows victims of domestic abuse to seek a protection order providing relief from imposing restraint on their liberty from threats, from actual violence, molestation, phone calls, contact and communication, and access to the residence where the victim resides. Additionally, it awards temporary custody of minor children and provides for their safety and welfare. LB83 would extend the same protection to any domestic animal or animals held or owned by either party or child residing in the household. A great deal of research has been done relating to pets and domestic violence. Statistics from these studies show that up to 75 percent of women who have been abused report that their pets have been abused. In a study done in the state of Wisconsin, 68 percent of abused women reported their pets had also been abused. It also revealed that in 75 percent of these incidents the pet was abused in front of the children. These studies and many more are readily accessible and confirm that animals are frequently victims in domestic violence and not only need but deserve protection. Not only that but they are clearly, as I stated, used as a manipulative tool to get women not to leave or to exert power over the situation. LB83 makes it clear to any Nebraska court that this protection can and should be provided. You're going to hear from some folks that are in to oppose this bill because they're afraid of livestock being considered part of this legislation. That's not at all the intent. We're talking about household pets and making sure that those aren't used as a manipulative tool or harmed in these domestic violence cases. I'm very willing to work with them to find language. We drafted one amendment already that they don't feel goes far enough. So we're clearly willing to work with them to find resolution to that. And then I hope that we can all find a way to support LB83. [LB83]

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SENATOR ASHFORD: Thank you, Senator. Senator Christensen. [LB83]

SENATOR CHRISTENSEN: Thank you, Chairman Ashford. Thank you, Senator McGill. I guess I, too, have the concern that sometimes when you refer to domestic animals you might refer to non-wildlife. So I get concerned about cattle, hogs, dairy, sheep, a lot of these things somehow being ruled in there. I understand you say it's not your intent. But I want to bring forth that I have that concern coming down this road that somehow this could get tied if not now or in the future. So some language would be very appropriate, in my book. [LB83]

SENATOR MCGILL: Exactly, and we're willing to do that. [LB83]

SENATOR CHRISTENSEN: Okay. [LB83]

SENATOR ASHFORD: Thank you, Senator Christensen. Thank you, Senator McGill. Proponents. How about, how many opponents do we have? Okay. Senator Lindsay. [LB83]

JOHN LINDSAY: (Exhibit 6) Thank you, Chairman Ashford, members of the committee. For the record, my name is John Lindsay, representing the Humane Society of the United States. At first blush this bill appears to be targeted at protection of animals. And yes, that is the case, it would have that impact. But more importantly it's targeted at protection of women and children. Domestic violence is about power and it's about control. And abusers will utilize whatever is within their reach, whatever leverage they can get to try to exert power and control over the persons they are battering. And oftentimes, because of the close affiliation or the close affinity one has for his or her pet, that becomes a leverage issue. Batterers are not afraid to use children in order to try to exert control over, generally, a woman who is being battered. And they're not afraid to use pets for the same reason. That is most or a large percentage...in the testimony that I passed out to you has some of the numbers in there. But a large percentage of battered women have delayed leaving their homes for one reason or another, oftentimes because of threats to the children, oftentimes because of threats against a pet. As many as half the women have delayed. That rises to nearly over 65 percent when a pet has actually been abused that again the delay for that woman's safety is put in jeopardy because of the abuse of the animal. What this bill does is very straightforward. It amends the protection...it allows, in a protection order, the court to address two issues. One is enjoining the defendant in the protection order from causing harm to the animal; or number two, providing for the care of that animal in that temporary period. I would concur with Senator McGill's statement. There is...I don't think the proponents of this have any intent to address commercial livestock, which I think is probably, Senator Christensen, what you were getting at. And I think excluding commercial livestock, I don't...at least from our perspective would be appropriate. With

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this I'd be happy to answer any question, Mr. Chairman. [LB83]

SENATOR ASHFORD: Senator Christensen. [LB83]

SENATOR CHRISTENSEN: Thank you, Chairman. John, thank you. I guess I'm, common sense thinking here. Don't understand somebody staying in abuse because of a pet. Pick up the pet and leave. You know? If someone is going to leave they're going to leave generally when that person is not there. I don't understand, you know, why they don't just pick up and leave. I guess why is an animal being abused? Why are we having to go down this road over something that's so easy to pick up and leave if this is strictly pets? [LB83]

JOHN LINDSAY: And, Senator, there is an entire psychology involved with domestic violence. And that psychology that the perspective of the world from the person who is being battered is oftentimes distorted by a wide variety of concerns, one of which is the entire issue of security. If I leave where do I go? Oftentimes the batterer may have complete control over the finances, complete control over the house, complete control over...because that's what they do. So the...there is already some concern about the batterer's own safety or more often than not the children's safety. And so there's a psychology. What I would suggest, Senator, though is that I'm not an expert in that at all. I believe there is going to be some testifiers from some domestic violence programs that would follow, and would ask maybe that they address that. And if not, I will get you information to the committee on why that occurs. [LB83]

SENATOR CHRISTENSEN: Okay, thank you. [LB83]

SENATOR ASHFORD: Senator Council, yes. [LB83]

SENATOR COUNCIL: Mr. Lindsay, from a proponent standpoint I just need to understand what is it about the current state of the law that the proponents believe does not allow a judge to place these requirements in any protection order that currently exists. [LB83]

JOHN LINDSAY: Senator, that's a good question. Offhand, I...other than the fact that it's not authorized in a protection order, in the Protection Order Act right now, I think that would be the answer that it's not authorized. [LB83]

SENATOR COUNCIL: Okay. Now the Protection Order Act as it currently reads, "Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member." Now if the person seeking the protection order states in his or her affidavit allegations regarding the use of the pet, and presumably they would have to do that even if you add this language. Unless the suggestion is that in every protection order the judge states all of the

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enumerated items in the statute, the person seeking the protection order would have to present some allegation in their affidavit of there being a pet and the pet being used as a part of the abuse in order for...to trigger an order directing the care of the animal or enjoining the respondent from harming the animal. So my question is, what is it in the statute now that does not allow a judge to do that if there are sufficient allegations in the affidavit? [LB83]

JOHN LINDSAY: Senator, as I mentioned, it is a good question. But I think that the fact that it is absent from...a specific authorization is absent from the statute right now. You then have to go to bootstrapping it in through some other general language, the general language that you referred to. And in so doing you have a lack of clarity. That lack of clarity can mean, in the language that you just quoted, "such other relief as provide for the safety and welfare of the petitioner," may get into a differing view of what constitutes the safety and welfare of the petitioner. If an animal, from a legal perspective, if we take it outside of the domestic violence, for lack of a better term, psychology what Senator Christensen brings up is abuse of the animal is not technically harming the safety and welfare of that petitioner. So kind of in a vacuum it would not satisfy that catchall phrase. If we look at, from a policy perspective, which is where this type of issue ought to be made in the Legislature. From the policy perspective if we know that looking at all of the circumstances of domestic violence that this is an issue that leads to further battery of women that the clarification providing that to the courts would make it clear that the court should address these issues. [LB83]

SENATOR COUNCIL: So perhaps defining "safety and welfare" would... [LB83]

JOHN LINDSAY: It could be another approach. [LB83]

SENATOR COUNCIL: ...would be another approach. Because the concern is that...and I hate to be so legally technical, but I've had to deal with so many of these, if it's not stated in the affidavit then you're not going to get an order directing the care and custody of an animal or enjoining the respondent from harming it. If the person filing the protection order request doesn't state that in the affidavit, that's not going to be in the order. [LB83]

JOHN LINDSAY: That's right. That is correct, Senator. [LB83]

SENATOR COUNCIL: So there has to be concomitant education of the individuals who are applying for protection orders that if they believe that that circumstance may exist that they have to state it in the affidavit in order to get it. But if we may perhaps define "safety and welfare" to include, you know, threatening the animal or harming an animal that would give the court the leverage to include that in the order. I'm just concerned that you may not be getting these kinds of orders in any event absent specific allegations in the affidavit to that effect. [LB83]

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JOHN LINDSAY: Well, I agree that that is an alternative approach, to define "safety and health"... [LB83]

SENATOR COUNCIL: "Safety and welfare," to include it. [LB83]

SENATOR LINDSAY: ..."safety and welfare," excuse me. Yes, I agree that that is another approach too. This one was maybe more narrow but... [LB83]

SENATOR COUNCIL: Okay. [LB83]

SENATOR ASHFORD: Senator Lathrop. [LB83]

SENATOR LATHROP: I maybe have a similar concern. And that would be that if we start listing things outside of the relationship, but things, then by listing and not including, I mean, I can imagine and I don't want to...this question is not intended to trivialize the subject matter of this particular amendment or bill. But we could say the same thing about one's car, you know, I might take your car away if you don't stay. Soon as you leave I'm going to throw your jewelry away. If we have a laundry list, if we start with a laundry list maybe what we need to do is talk about things and include the family animals in there. [LB83]

JOHN LINDSAY: And that, Senator, I don't know what the... [LB83]

SENATOR LATHROP: And maybe make it more broad to include those things. Otherwise, if we have a list of things then somebody tries for a restraining order and it's about the car this time. The judge could say, well, it's not on the laundry list so... [LB83]

JOHN LINDSAY: And that's a legitimate concern by omitting, because that would mean the Legislature did not intend for that to be covered, which maybe what we're...this is adjusting now. And that might look toward Senator Council's suggestion of maybe expanding on the scope of "safety and welfare." And I don't know that we're tied to specific language. It's the underlying issue that we're trying to get to so... [LB83]

SENATOR LATHROP: Who did you say you have...who is your client? [LB83]

JOHN LINDSAY: The Humane Society of the United States. [LB83]

SENATOR LATHROP: The Humane Society. [LB83]

JOHN LINDSAY: Right. And there is, I think in the testimony that was handed out, there is a host of research out there that ties animal abuse to later becoming a batterer of humans. And...I mean, there is a connection specifically to domestic violence whereas it

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might be a little bit further step. Although I would suggest that in the area of domestic violence batterers are not afraid to use anything to get leverage over their victims. And so maybe a broader approach would work. And we would be happy to work with the committee on taking any approach that the committee believes is appropriate. [LB83]

SENATOR ASHFORD: Senator Christensen. [LB83]

SENATOR CHRISTENSEN: Yes. John, again going back to where Senator Council was at and then follow Senator Lathrop there, if you took that same section "order such other relief necessary to provide for safety and welfare of the petitioner and any designated family, household member and personal items," would that not take care of it? Because that takes care of a car issue, that takes care of any item that they may want to hold over them. That's (i) or, I guess, maybe it's supposed to be 1, under (h). [LB83]

JOHN LINDSAY: And the question, Senator, is there's a balance between a protection order which is intended as a quick emergency...primary goal is protecting human life and in this bill animal life but as well as that extends to human life. The...if when we try to do too much in a protection order it starts to maybe cross that line into being too complex or slowing down the process of getting that protection order in place. That would be what I referred to earlier, to the balance between meeting the underlying goals of a protection order with making sure that it's broad enough to actually protect the person. And that is a balancing test that I think the committee will have to look at. [LB83]

SENATOR CHRISTENSEN: Thanks. [LB83]

SENATOR ASHFORD: Senator Lautenbaugh. [LB83]

SENATOR LAUTENBAUGH: I'll be honest, John, and thank you for coming today. I don't practice in this area routinely. Do protection orders usually deal with property in any way? I had always understood they were to protect...prevent personal injury. [LB83]

JOHN LINDSAY: They can. There...and there have been proposals over the years that, I'd probably defer to Senator Council (laugh) who's probably practiced more in this area than I have. (Laughter) [LB83]

SENATOR ASHFORD: John, maybe Senator Council...we could certainly...I could...(laugh). [LB83]

JOHN LINDSAY: We could change places here then. And actually I would defer to Senator Council on the workings of protection orders. I would tell you historically there have been a variety of proposals that have come to the Judiciary Committee over the years on different things that should or should not be included in protection orders. So there is a history of looking at various items. [LB83]

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SENATOR LAUTENBAUGH: Because I mean, I can understand if they are designed to immediately protect a person from bodily harm. And since a household pet would be a living thing you'd want to protect that too. But when you get to mere nonliving property, if you will, cars, I didn't know if those were ever contemplated in a protection order. Maybe I should be asking Senator Council because I don't know the answer to that. [LB83]

SENATOR COUNCIL: I don't want to be out of line, Senator Ashford. [LB83]

SENATOR ASHFORD: You may respond. I'm just having a good time sitting here listening to all this. [LB83]

SENATOR COUNCIL: In large measure, Senator Lautenbaugh, it depends upon what the allegations are in the affidavit of the person seeking the protection order. And if they've made allegations that the person has disturbed their peace by damaging their automobile or throwing bricks through their window or whatever manner their peace is disturbed, the judge can enter an order enjoining the respondent from engaging in that kind of conduct, from, you know, disturbing the petitioner's peace by damaging their automobile or damaging their personal property or...it depends upon the allegations. And that's what...the reason I had expressed a concern about pets, that if there is no mention of a pet in the allegation in the affidavit, what is there to guide the judge? Because these are ex parte, there are no hearings. They depend exclusively on what's set forth in the affidavit. If there is nothing in the affidavit that speaks to pets, there is not going to be anything in the protection order that's going to speak to pets, in most cases. [LB83]

SENATOR LAUTENBAUGH: Then continuing this little conversation, if I may. [LB83]

SENATOR ASHFORD: Go ahead. That's why this is such a great committee. [LB83]

SENATOR LAUTENBAUGH: Then under the current law, if the affidavit said he or she has been attacking my dog, can a protection order issue that says stop attacking the dog? [LB83]

SENATOR COUNCIL: I think under...I think the judge has authority to, because they would...I would read "safety and welfare" broadly. And I would read "household member" broadly. But that's me. I'm not saying that every judge would, but I am thinking every judge...that a judge could read "household member" broadly enough to include pet if the allegations in the affidavit suggested that they were at risk of harm as well. [LB83]

SENATOR LAUTENBAUGH: Thank you, John. [LB83]

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JOHN LINDSAY: And, Senator Council, maybe I'd just add as well that the specificity is important because women who are trying to get out of a battery situation need to be reassured that those things which the batterer obtains leverage over them will be addressed. And again, I would defer to some of the domestic violence people if they testify. But my guess is they've heard before, I'm not leaving, he's going to kill my puppy. And if we can get her out of that environment by protecting that puppy, I think society is well served. [LB83]

SENATOR ASHFORD: I see that. And oftentimes judges do like to get policy enunciated clearly sometimes or they will avoid issuing orders. But I think I understand the point. Thanks, John. Anybody else speaking in support of this bill? [LB83]

ROBERT DOWNEY: (Exhibit 7) Chairman Ashford, members of the Judiciary Committee, my name is Robert Downey. I'm the executive director of Capital Humane Society, here in Lincoln, Nebraska. I'm not going to repeat the things that are in my testimony that John has already covered. What's important to me about this bill and one of the reasons that I approached Senator McGill about this is because pets are living, breathing creatures. And I think this is a clarification point in existing law. I do think under existing law potentially pets could be considered in pet protection order...or in protection orders at this point. But if they are specifically pointed out in law, if I have gone to an attorney seeking a protection order, I would hope the attorney asks me a whole lot more questions about what's going on in the household in which I reside and to cover those types of things. If a woman gets a protection order for herself, gets a protection order for children in the home, and is allowed to remain, to reside in the home and there happens to be a dog that is in the home that is well-known to the batterer, that will respond to the batterer, there is nothing to prevent the batterer from driving by the home summoning the dog by calling it as he drives by, getting it into a vehicle and taking it someplace else and causing harm to it. Harm to a physical item such as an automobile that somebody might cause damage to or something can be fixed. Yes, it is traumatic to the victim to know that their abuser is going to go to the extent to do that type of damage. But it is even further traumatic to the individual who has bonded with a living, breathing thing to realize that somebody will take that animal, break its leg, strangle it to death, won't go beyond that. And the protection order for pets would help to alleviate that particular situation. Capital Humane Society, for the last 25 years, has been boarding animals for people who...for women who are seeking refuge in domestic violence shelters in this community. And so I'm very, very familiar with some of the things those women have to deal with. I will tell you that we had an incident down by Crete, Nebraska a number of years ago where a farm wife, who was being battered, who had a cow that she referred to as her pet, and it was an individual animal out of many animals on that farm, would not leave the situation that she was in because her husband specifically told her he would shoot the cow the day she left. And it prevented her from leaving. One day when he was gone, we went to the property with her and with law enforcement officials, loaded the cow up into a trailer, brought it to the shelter in

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Lincoln and housed it there for a couple of weeks. She left the situation she was in, sought refuge in a domestic violence shelter. And ultimately the cow was relocated to a friend's property between Lincoln and Omaha. And that was a lifesaving factor in getting her away from the situation that she was in. I urge the committee to move LB83 forward. [LB83]

SENATOR ASHFORD: Robert, you always have good information. You're always well-prepared when you come before us so we appreciate that. [LB83]

ROBERT DOWNEY: Thank you. [LB83]

SENATOR ASHFORD: Senator Christensen. [LB83]

SENATOR CHRISTENSEN: Thank you, Chairman. You just used an example of using a cow. [LB83]

ROBERT DOWNEY: Yes. [LB83]

SENATOR CHRISTENSEN: And there come my concern. [LB83]

ROBERT DOWNEY: I understand. [LB83]

SENATOR CHRISTENSEN: And I understand. I've been in 4-H. I've got kids in 4-H. Animals can become pets that are commercial, typically. That's where I get concerns here of intent and interpretation. [LB83]

ROBERT DOWNEY: Correct. [LB83]

SENATOR CHRISTENSEN: And your testimony there just brings up the concern I've had with the bill from the beginning. [LB83]

ROBERT DOWNEY: Yeah. [LB83]

SENATOR CHRISTENSEN: The intent of Senator McGill, I believe, is what she talked about. But the example you give gives concern of what I got. And I don't even want that cow hurt. Granted, it's a balancing act in policy that is difficult. And that's where I sit torn right here. [LB83]

ROBERT DOWNEY: I fully understand your point on that issue. And I had a conversation in this room with Craig Head, who is here to represent the Farm Bureau. And I think there are language ways that this can be worked out and defined in the bill, ultimately. I don't have that magic language. I would hope a court would recognize that something different is going on if somebody walked into a court and was seeking a

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protection order on a herd of 40 head of cattle versus a protection order on 1 animal off of a rural property that they had bonded with and considered to be their friend, to be their pet. [LB83]

SENATOR ASHFORD: It might be helpful, Robert, if you get together with the Farm Bureau and think about something that would satisfy Senator Christensen's concerns. [LB83]

ROBERT DOWNEY: That's a good suggestion. [LB83]

SENATOR ASHFORD: Yeah. Okay, thank you. Thanks, Robert. [LB83]

ROBERT DOWNEY: You're welcome. [LB83]

SENATOR ASHFORD: Any other proponents? Dare I say opponents? How about neutral testifiers? Do we have any of those? Okay. [LB83]

CRAIG HEAD: Good afternoon, Senator Ashford, members of the committee. My name is Craig Head and I'm with the Nebraska Farm Bureau Federation. The name is spelled C-r-a-i-g H-e-a-d. And, I guess, I'd just start off by saying I want to thank Senator McGill for visiting with us this morning and indicating a willingness to work with us on the issue that we have with the bill in terms of the definition of domestic animal. We appreciate the conversation that you've been having about trying to address this concern. I do have some language that after I visited with Senator McGill this morning I talked to. And we'll get that shared with some other folks and the committee and try to work through that if at all possible. With that, I don't have a lot more other than just to share that concern. I would tell you that... [LB83]

SENATOR ASHFORD: What does your language say? [LB83]

CRAIG HEAD: Yeah. It just says, "For purposes of this section domestic animals will not include cattle, horses, mules, donkeys, sheep, swine, poultry, or other animals utilized in the day-to-day operation of a commercial agriculture operation." Trying to get back to that issue that I think Senator Christensen raised here about the individual cow, the 4-H calf, those individual cases where it could be a livestock animal. So... [LB83]

SENATOR ASHFORD: Okay. [LB83]

CRAIG HEAD: I guess, just real quick for the committee I would say that three years ago we would not be in front of the committee of concern on an issue like this. But I do think it's important to point out that we have seen, over the last several years, a number of issues where some national groups have tried to make the tie between house pets and farm animals, and that has ultimately resulted in some protections for farm animals

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that has resulted in banning of mainstream normal agriculture husbandry practices. And so when we see this type of language it really raises concern for us, which is why we... [LB83]

SENATOR ASHFORD: Well, you don't want to see an overbroad protection order that curtails the operation of the farm. [LB83]

CRAIG HEAD: Exactly. That is exactly right. [LB83]

SENATOR ASHFORD: Okay. Okay. All right. And that's a fair point. [LB83]

CRAIG HEAD: Thank you very much, unless there's any questions. [LB83]

SENATOR ASHFORD: Good point, too, and fair, both. Okay. Thank you. Any questions? Thank you. [LB83]

CRAIG HEAD: Good. Thank you. [LB83]

SENATOR ASHFORD: Opponents. [LB83]

PETE McClymont: Good afternoon, Chairman Ashford, members of the committee. My name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here representing the membership of Nebraska Cattlemen. Just here to echo what Mr. Head said. We want to thank Senator McGill. She was very open to what our concerns were and expressed that she had no desire to encroach upon commercial livestock operations. So she's doing a noble thing here in trying to protect battered women that need to be reassured that they can have their pets included in a protection order. So we, too, would agree with the language that Farm Bureau has brought. So be happy to continue to work with the committee and Senator McGill as we go forward on this. [LB83]

SENATOR ASHFORD: Thanks, Pete. Any questions of Pete? Thank you. [LB83]

PETE McClymont: Thank you. [LB83]

SENATOR ASHFORD: Any other opponents? Neutral? Senator McGill. [LB83]

SENATOR McGill: I don't have anything. [LB83]

SENATOR ASHFORD: (Exhibits 9 and 10) Senator McGill waives. That concludes the hearing on, a very interesting hearing on LB83. Senator Avery is next with LB190. [LB83 LB190]

SENATOR AVERY: Thank you, Mr. Chair. For the record, my name is Bill Avery,

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spelled A-v-e-r-y. I represent District 28. I am bringing before you today LB190, the DNA Identification Information Act that will bring Nebraska into line with 47 other states. What it does is make DNA collection and testing mandatory for all felons, effective...that is convicted felons, effective on the date of this act. It also makes DNA collection and testing mandatory for any person who has previously been convicted of a felony offense and is still serving a term of confinement effective on the date of this act. Under current law, only certain felonies or certain felons are required to submit to mandatory testing. These are mostly sex offenders, kidnappers, and people convicted of false imprisonment of minors. This bill merely expands the current law to include all convicted felons. DNA databanks are increasingly important in criminal investigations. DNA evidence is a powerful tool, as you know, in convicting the guilty. It is also powerful in exonerating the innocent. And it has been used extensively in locating and identifying missing persons and human remains. Nebraska currently participates in the Federal Bureau of Investigations Combined DNA Index System, known as CODIS. I'll refer to that again in a minute. As of November 2008, CODIS maintains over 4,200 offender profiles of Nebraska citizens and has aided the Nebraska State Patrol in 16 cold hit investigations by providing added value to police work. The Innocents Project reports that to date 227 people in the United States have been exonerated by DNA testing, including 17 who served time on death row. These people... [LB190]

SENATOR ASHFORD: How many...Bill, I'm sorry. How many did you say? [LB190]

SENATOR AVERY: Two hundred and twenty-seven exonerated by testing, including seventeen who had served time on death row. These people had served an average of 12 years in prison before they were exonerated and released. I want to address some possible objections. The Fourth Amendment to the U.S. Constitution protects us from unreasonable search and seizure. Most organizations involved in the debate on DNA testing consider the matter of convicted felons being tested to be a closed issue. The U.S. Supreme Court has routinely refused to consider appeals from lower courts in which judges have ruled in favor of these testing statutes. The Supreme Court has long maintained that the intrusion that occurs by taking a blood sample is minimal, virtually involving no risk, no trauma, and no pain. And we can also do cheek swabs, which of course is not painful either. Societal benefits stem from the capacity to identify or to exclude individuals quickly, accurately and at a reasonable expense. I would ask you also to consider the fact that already authorities take fingerprints, authorities take photographs, and personal information at the time of arrest. We know that eyewitnesses to crimes may be mistaken and uncertain in what they see and can recall. We know that lawyers can, I shouldn't say this probably to this committee, lawyers can make mistakes and bungle cases, (laughter) none of you of course, and police can make errors. But a \$10,000 Zeiss microscope is about as close to infallibility as you can get because it does provide us with evidence that involves genetic markers that can unlock the door to many unsolved crimes, and it can lead to proper convictions, and it can clear those falsely convicted. The second possible objection, if you look at your fiscal note is that,

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well, we can't afford this. And we're going to hear a lot of that throughout the course of this session. The first year the estimated cost is close to \$312,000, and the second year the cost is just over \$177,000. What I want to point out about the fiscal note is that these numbers do not reflect the very real possibility of federal grant funding, which in the past has been available to states at no cost to the state. In fact Nebraska received an estimated amount of \$217,000 in fiscal year 2008 as part of the forensic DNA backlog reduction program. There is one other thing that I want to bring up before I sit down. And this was brought to my attention by the State Patrol. And it's in a section of statute that this bill does not address. This bill addresses Section 29-4107, am I right? Okay, I've got the bill here, 4102, 4103, and 4106. Now if you go to statute 29-4108 we have a...in law some rules for how we handle DNA tests and the confidentiality of that. And the current law reads that DNA test banks "are confidential except as otherwise provided in the DNA Identification Information Act. The Nebraska State Patrol shall make DNA records in the State DNA Data Base available to law enforcement agencies and forensic DNA laboratories." That should be changed to read "and CODIS participating DNA laboratories." So you might want to consider making that correction in 29-4108 in a committee amendment. This just came to my attention this morning. It would also require changing language in item (3) in that section. Where "forensic DNA laboratory" is used you would substitute "CODIS participating." CODIS is the Combined DNA Index System for the federal government. If you, in your deliberations in Exec Session should you get to the question of expungement of the record we have in 29-4109 language about expungement. It does not address, however, what you do with this evidence in the case of someone who dies. I presume that could be added to that section of the law. With that I will stop and take any questions you have. [LB190]

SENATOR ASHFORD: Thanks, Bill. Any questions of Senator Avery? Senator Lathrop. [LB190]

SENATOR LATHROP: I do. Is your suggestion that we amend 29-4108 to say is it CODIS? [LB190]

SENATOR AVERY: CODIS, C-O-D-I-S. [LB190]

SENATOR LATHROP: CODIS participating... [LB190]

SENATOR AVERY: It's an acronym for Combined DNA Index System. [LB190]

SENATOR LATHROP: Okay. That was a restriction on to whom we may provide the information. [LB190]

SENATOR AVERY: Right. [LB190]

SENATOR LATHROP: And you suggested that we clarify it. [LB190]

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SENATOR AVERY: Clarify it so that it's not all forensic DNA laboratories but only those that participate in the CODIS system. [LB190]

SENATOR LATHROP: Why would we do that? Why not give them to any... [LB190]

SENATOR AVERY: Because... [LB190]

SENATOR LATHROP: Let me finish, if I can... [LB190]

SENATOR AVERY: Okay. [LB190]

SENATOR LATHROP: ...to make sure your answer answers my question which is, are we narrowing the number of people we can share this information with by putting "CODIS participating forensic lab" in there? And if so, why do we want to limit it to just participating labs? [LB190]

SENATOR AVERY: I think that it is not limiting it so much as it is making it more secure. [LB190]

SENATOR LATHROP: Okay. They have certain requirements and we know that once it goes to a CODIS lab it's not going any further. [LB190]

SENATOR AVERY: Right. [LB190]

SENATOR LATHROP: Got it. Okay. [LB190]

SENATOR ASHFORD: And essentially...I'm sorry. Senator Christensen, did you... [LB190]

SENATOR CHRISTENSEN: Yeah. I'll ask one, I guess. Thank you, Chairman. You were very delicate and careful on saying DNA only on convicted felons. Is there any concern, if somebody is released because of DNA, that their sample needs to be removed? [LB190]

SENATOR AVERY: That is not in the law...in my bill. It is, however, in the law under 29-4109. And it does provide for the expungement of the record if someone is wrongly convicted and released. [LB190]

SENATOR CHRISTENSEN: Okay. Thank you. [LB190]

SENATOR ASHFORD: Senator Lautenbaugh. [LB190]

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SENATOR LAUTENBAUGH: Do you know what percentage of felonies are committed by repeat offenders? [LB190]

SENATOR AVERY: That's a good question. I don't know the exact percentage... [LB190]

SENATOR ASHFORD: Fifty-seven percent. [LB190]

SENATOR AVERY: ...but it's pretty high. Yeah. And that's one of the motivating factors behind this bill. We do know that a lot of people who are convicted of felonies have committed other felonies. And we don't know that at the time and sometimes we never find out. This would help us, I believe, do a lot of cold case...assist in those cold case investigations. [LB190]

SENATOR LAUTENBAUGH: Thank you for bringing this. [LB190]

SENATOR ASHFORD: Yeah. Is that the case, Bill, even in situations where the offense has no possible relationship to the kind of material evidence that a DNA test would have any relevance to, for example, white-collar crime of some kind or something that where DNA just isn't a factor. [LB190]

SENATOR AVERY: Well,... [LB190]

SENATOR ASHFORD: I mean, what I'm saying is do you have to test...do all 47 states test all felonies? That's what you're saying? [LB190]

SENATOR AVERY: No, no. They all have...well, they do have some kind of testing for felonies, for felons. I'm not sure... [LB190]

SENATOR ASHFORD: Okay. So we're saying all felonies here? [LB190]

SENATOR AVERY: We're saying all felonies here. And we currently, in the state of Nebraska we do have mandatory DNA testing for certain felons. [LB190]

SENATOR ASHFORD: Right, right. And you think even something that's...where the material evidence is not...where DNA has nothing to do with it, that...because you're talking about recidivism here too. You're talking about repeat offense and... [LB190]

SENATOR AVERY: Yeah. [LB190]

SENATOR ASHFORD: ...and that somehow having that in the bank can help solve the crime in this instance. [LB190]

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SENATOR AVERY: I think so. [LB190]

SENATOR ASHFORD: Because you could have a check situation... [LB190]

SENATOR AVERY: It may not...it might not work with white-collar crime. [LB190]

SENATOR ASHFORD: Yeah. [LB190]

SENATOR AVERY: And I don't know what the rate is on white-collar criminals, how often they commit other felonies. [LB190]

SENATOR ASHFORD: Right, not only that but I mean the purpose of the proposal which is a good proposal. But the purpose is to reduce recidivism or at least to try to stop and the other is to exonerate. [LB190]

SENATOR AVERY: And, yeah, but the cold case element of it, I think, is really important. [LB190]

SENATOR ASHFORD: You think the cold case is the big deal here? [LB190]

SENATOR AVERY: I really think so. [LB190]

SENATOR ASHFORD: Okay. [LB190]

SENATOR AVERY: Maybe I watch too much TV. (Laughter) [LB190]

SENATOR ASHFORD: No. I mean, it's a good explanation. Any other questions of Senator Avery? You want to stick around, Bill? [LB190]

SENATOR AVERY: I have other committee obligations so I will waive closing. [LB190]

SENATOR ASHFORD: Okay. Thank you. [LB190]

SENATOR AVERY: But I might stay for a little while. [LB190]

SENATOR ASHFORD: All right. Any...how about proponents of this bill, do we have any proponents? Corey. How about opponents, do we have opponents here? Okay. Laurel is here. And... [LB190]

COREY O'BRIEN: Good afternoon. My name is Corey O'Brien with the Attorney General's Office. And I'm an assistant attorney general in the Drug and Violent Crime Division. Senator Avery stole most of my good material so I'll try to be brief. As Senator Avery indicated to you, Nebraska is but one of three states, Idaho and New Hampshire

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being the others, that does not permit the collection of DNA samples from all convicted felons, that includes white-collar felons. Unlike CODIS statutes in many other states, LB190 does not allow collection of DNA samples for misdemeanors, juveniles, arrestees, or criminal suspects. There are a number of states that have gone that direction to include those individuals as well. This bill would limit the collection to adults who were represented by counsel, had a right to trial by jury, and were found guilty beyond a reasonable doubt of felony offenses. LB190 is a reasonable extension of the existing CODIS statute and would allow for samples to be collected from those convicted of first-degree assaults, kidnapping of adults, false imprisonment of adults that are not collected today. According to the FBI, nationwide under CODIS there are approximately 6 million offender profiles in their system. There are 200,000 forensic profiles in their database. Since the inception of CODIS in the mid-1990s, CODIS has helped solve over 79,000 criminal cases. In Nebraska, as Senator Avery referenced, there are approximately 4,271 offender profiles in their system and it's helped solve 16 criminal cases. Included in that was the recent case of Roy Ellis who murdered Amber Harris. While many say that CODIS is an invaluable law enforcement tool, I believe that it's an invaluable tool for the entire criminal justice system, not just for the benefits of cops and prosecutors but the wrongfully accused as well. While we often hear stories about CODIS helping identify suspects, what we don't ever hear are the stories that happen far more frequently where police have a suspect, they perform DNA testing, they submit those DNA testing results to CODIS, and the CODIS system eliminates them from further consideration as a suspect. While the producers of shows like CSI would have you believe that CODIS is a mechanism of "Big Brother," it is not. Instead it is a mechanism designed to aid in the search for truth and to make sure that we in law enforcement get it right by bringing the truly guilty to justice. Please join me in supporting LB190 and its goal of promoting the search for truth and justice. Thank you. And I'd be glad to answer any questions you might have. [LB190]

SENATOR ASHFORD: Corey, just...this is a...most people, I'm sure, know the answer to this. But an arrested person in a...that you described, when does DNA...when is that evidence taken? [LB190]

COREY O'BRIEN: Someone that's arrested, while under Senator Avery's bill an arrestee would not be subject to testing. [LB190]

SENATOR ASHFORD: No, I know. But...I know. But where normally, I mean, it has to be...it's a search. [LB190]

COREY O'BRIEN: Generally in my experience it comes by way of court order nine times out of ten before they're actually arrested. [LB190]

SENATOR ASHFORD: Right. [LB190]

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COREY O'BRIEN: There is a DNA test...or there is a physical characteristic statute that allows for the obtaining of court orders to get DNA or you could do it by way of a search warrant as well. So that's usually where in the process it comes in. [LB190]

SENATOR ASHFORD: Those are the ways--search warrant or an order, court order. [LB190]

COREY O'BRIEN: Or a court order or voluntarily by consent. Those are the three ways that we normally get DNA when we're investigating normal crimes. [LB190]

SENATOR ASHFORD: Okay. Yeah, Senator Christensen. [LB190]

SENATOR CHRISTENSEN: Thank you, Chairman. Aren't we limiting ourselves if we wait until after they're convicted? I understand in storing it in the bank maybe you don't want it in the bank if they're not convicted. But isn't it limiting the proving that someone is guilty or innocent if you can't test them before? [LB190]

COREY O'BRIEN: The goal really isn't to use that as evidence in the crime that they are being convicted of at that point in time or they're being arrested for at that given time. The goal is to help solve cases that they might have been involved in, in the past, that are unsolved and are cold, or more likely than not it's situations in which they commit later crimes and we go back and we find out that...who that person is through the DNA that was collected when they were first convicted of those crimes. So that's what the overall goal is. Some people say that it actually serves as a deterrent effect, that if we collect DNA from somebody that's actually been convicted of a felony, they know good and well that their DNA is on file somewhere, and that if they go out there and commit another crime that we're going to be able to find them because their DNA is in our database. [LB190]

SENATOR CHRISTENSEN: Thank you. [LB190]

COREY O'BRIEN: Thank you, Senator Christensen. [LB190]

SENATOR ASHFORD: Thank you, Corey. [LB190]

COREY O'BRIEN: Thank you. [LB190]

SENATOR ASHFORD: Any other proponents? Opponents? Laurel. [LB190]

LAUREL MARSH: (Exhibit 8) And I promise I will not read this whole report. Good afternoon. My name is Laurel Marsh, M-a-r-s-h, and I'm the executive director of ACLU Nebraska. And ACLU Nebraska opposes LB190's efforts to make all convicted felons provide DNA for a state database. As technology has expanded, there's also been an

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increasing use by law enforcement of DNA databanks. By law, lawmakers need to ensure that such expansion is only made when absolutely necessary in order to avoid dangerous impositions to civil liberties affected by this expansion. Unlike fingerprints or photos to identify criminals, DNA reveals substantially more information about each of us. With DNA a person's tissue is mined to reveal individualized information well beyond that for identification. For example, my DNA reveals my race, my genetic disposition for certain diseases, and in the future might even be able to tell you my sexual orientation, my IQ, or my tendency toward mental illness. Therefore when you take an individual's DNA you do not simply have a way to match identity, you also have a huge storehouse of extremely private information about that individual. And such intimate details are private and have no business going or being shared with the government without a substantial reason for collecting it. Under Nebraska's current statutes, DNA is already collected from people who have been convicted of certain serious crimes where DNA is likely to help trace them if another such crime is committed such as race. There is no reason that we need DNA for nonviolent offenders. And I think that was part of your previous discussion. Collecting all convicted felons' private information does nothing to further the states' interest and simultaneously creates a huge database of intensely personal information. When you are looking at or if you have an opportunity to glance through this report at another point in time, I'd like to call your attention to two pieces. The second to the last page you will find several recommendations. And if you look at recommendation number 3, which would describe a model database, you'll see that it is the system that we essentially already have. DNA databanks should be limited to DNA profiles from persons who are convicted of serious crimes. That's what Nebraska already does. And I also wanted to call your attention to the first full paragraph on page 8 that does describe a couple of limitations that courts have placed on systems where all convicted offenders have given DNA. So, yes, it is not an uncommon thing to do. But it is not without existing restrictions. The piece that you have in front of you, the letter, will also describe the costs of maintaining or problems with the costs of maintaining a system indefinitely once it is started. I hope that you would add those to your consideration of the financial implications and indefinitely postpone LB190. [LB190]

SENATOR ASHFORD: Thank you, Laurel. Any questions of Laurel? Seeing none, thanks. [LB190]

LAUREL MARSH: Thank you. [LB190]

SENATOR ASHFORD: Any other opponents? Neutral? Okay, we're finished. That concludes the hearing and all the hearings for the day. [LB190]

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Disposition of Bills:

LB41 - Placed on General File.

LB78 - Held in committee.

LB83 - Placed on General File with amendments.

LB185 - Indefinitely postponed.

LB190 - Placed on General File with amendments.

Chairperson

Committee Clerk