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Judiciary Committee
March 11, 2009

[LB15 LB97 LB430 LB496 LB671]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 11, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB97, LB15, LB496, LB671, and LB430. 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.
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SENATOR ASHFORD: Good afternoon, everyone, and welcome to the Ernie Chambers Judiciary Hearing Room. My name is Brad Ashford. I'm from Omaha. And Senator Coash is here from Lincoln, and Senator Lautenbaugh is here from Blair-Omaha, and in between. Is there a town in between there? []

SENATOR LAUTENBAUGH: Fort Calhoun. []

SENATOR ASHFORD: Fort Calhoun, and Senator McGill from Lincoln, of course, and Stacey Trout, committee counsel, and Christina Case is committee clerk. So what we're going to do today is take up five bills. The first two bills are LB97, Senator Lautenbaugh's bill, and LB15, Senator White's bill. And I appreciate their working with us on this, and we're going to take those two bills together. It will start with Senator Lautenbaugh's bill, and then Senator White will go after that, and the testimony should be on both those bills or either one or the other, so that's how we'll do it. Senator Lautenbaugh. [LB97]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford and members of the committee who are here. My name is Senator Lautenbaugh, Scott Lautenbaugh, and I'm the introducer of LB97. This bill was brought to me by the Attorney General's Office, and as I think I said at the outset on this, I am not sure if I'm the ideal senator to be introducing this or not, because I have sort of a...this area is very troubling to me, and it provokes kind of a rage and maybe a lack of perspective that I probably shouldn't have as the sponsor of this bill or probably should have the perspective as sponsor of this bill. But in any event, I'm here to introduce it just the same and, basically, I'll go through the provisions of LB97. I will be here to close. I know there are people from the Attorney General's Office coming behind me to discuss many of the particulars, and it is a long and involved bill. Briefly put, as briefly as possible, LB97 allows for service of search warrants and subpoenas on Internet service providers located in other jurisdictions. It adopts the federal rules of evidence concerning the admissibility of prior instances of sexual behavior of an accused offender, changes the charge of on-line enticement using a computer to on-line enticement using any electronic communication device to take into account texting and whatnot. It expands the definition of visual depiction of sexually explicit conduct to include undeveloped films and video tapes, and to include images merely depicted digitally on a computer screen; describes the rules and

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procedures for introducing child pornography at trial, and for sharing child pornography evidence with the defense through the discovery process. It eliminates the applicability of the statute of limitations for the crime of incest, and requires the judges to inform applicable sex offenders at sentencing that they will have to disclose pertinent computer and Internet information to law enforcement, and inform them that they are prohibited from accessing and using social networking sites. Pertinent computer information includes all e-mail addresses, instant messaging identities, chat room identities, other Internet communication identities that the person uses or plans to use, all uniform resource locators registered or used by the registrant, all blogs and Internet sites maintained by the person or to which the person has uploaded any content or posted any message or information. All offenders shall also sign a consent form allowing the search of all computers or electronic communication devices owned or used by the offender as well as the installation of hardware or software to monitor such person's Internet usage. Again, this does add enticement by electronic communication device to the list of registrable sex offenses, creates the offense of unlawful use of the Internet by a registered sex offender, and makes it mandatory for computer technicians to report to law enforcement any findings of child abuse, child sexual exploitation, or child pornography they make during the course of their employment. It does provide for various penalty adjustments as well, changes the penalty for on-line enticement for a first offense. It increases the penalty for criminal child enticement from a Class I misdemeanor to a Class IIIA felony, makes the production, manufacture of child pornography a Class ID felony for the first offense as opposed to a Class III felony and a Class IC felony for subsequent offenses as opposed to a Class II felony; makes trafficking of child pornography a Class III felony for first offense as opposed to a Class IIIA felony and a Class IC felony for subsequent offenses. As I stated at the outset, this is an area that I have trouble basically dealing with and processing in my own mind. When I first began discussing this legislation with the Attorney General's Office, we started talking about the volume of people in just our state that have images...child pornographic images that they're sharing on their computers. And I was shocked to find that the number is believed to be about 10,000 computers just in the state of Nebraska. Ten thousand people sharing these types of images, and that was a shock to me, and it's just stunning to me that that could be going on, so this bill attempts to deal with several facets of this problem. I know there are a couple of amendments coming. Some of the entities have some concerns about First Amendment concerns and adults being depicted as children on film as not being within the ambit of this, hopefully. And we're willing to work with them on that, but I do think it's an important bit of legislation and I'll ask you to look on it favorably. Once again, I will be here to close. I'd be happy to take any questions now. I'll be happy to take them afterward, after we've heard from the AG's Office and others as well. [LB97]

SENATOR ASHFORD: Thank you. Any questions of Senator Lautenbaugh? Seeing none at this time, I'm sure we'll have some later. Senator White. [LB97 LB15]

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SENATOR WHITE: (Exhibit 1) Thank you, Senator Ashford, members of the Judiciary Committee. Thank you for giving me the opportunity to come before you and introduce LB15. LB15 is also a bill dealing with the problem of sexual predators preying on our children. LB15, in short, would require, as was initially introduced, would require that anyone convicted of a registrable sex offense in this state also register their driver's license and their Internet access and provider numbers with the Sex Offender Registry. The primary purpose of this is to allow parents of children who are contacted to go back against that number and check it against its Sex Offender Registry to see whether or not their children have been communicating with people that have previously been convicted of sex offenses. When we introduced this bill, we considered the possibility of making it illegal for sex offenders to contact on interactive chat rooms, things like that, but it was my concern that that would violate the First Amendment and threaten the bill. I'm very confident that this would not, that the registry of your computer number would not in anyway stop a person who had been convicted of sex offense from using the computer and accessing information, but it would hold them accountable should they use it inappropriately. After we had introduced LB15, Senator Lautenbaugh was courteous enough along with the Attorney General's Office, came to us with some companion concerns and asked if we would accommodate them, and to that end, we have a proposed amendment to LB15 which I strongly recommend the committee look at. In fact, it's really a replacement of LB15. It still does the same thing we just discussed, but it also does a couple of other things. One is it introduces mandatory minimum sentencing for certain of the most egregious sex offenders, and that, I think, is very important for reasons, because of the nature of the crime. This is a crime that's almost unique in its ability to breed the next...first victims and then perpetrators. Often victims of these crimes become perpetrators. Therefore, it is the kind of crime that we can do something about. If we cut down the number of perpetrators in this generation, we will certainly reduce the number of perpetrators in following generations. So that is the concept of mandatory minimum sentencing, but also it has a provision in there that takes care of one of the problems that often has given me pause in this area which is older...usually boys but sometimes girls dating younger members in their high school. It introduces a concept of ages to get away from sliding scale; basically, a person who's over 25 has no business dating younger people, and it sets that forth in the bill. Those are the concepts behind it. I want to thank the Attorney General's Office and Senator Lautenbaugh for working with us on this bill as well, and I'd be happy to try to answer any questions that the committee may have. [LB97 LB15]

SENATOR ASHFORD: Thank you, Senator White. Any questions of Tom? Seeing none, are you going to remain? [LB97 LB15]

SENATOR WHITE: I can stay to close if that is helpful for the committee. I'll wait, and if it looks like you don't have questions, I'll waive it at that time. [LB97 LB15]

SENATOR ASHFORD: Thanks. Proponents of either bill? Let me introduce Senator

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Lathrop, the Vice Chair of the committee and Senator Council, who has arrived as well. So proponents of either...both. Just let us know which ones you're going to talk about, which one or both. [LB97 LB15]

COREY O'BRIEN: (Exhibits 2, 3, and 4) Good afternoon, Mr. Chairman, fellow members of the Judiciary Committee. My name is Corey O'Brien. I'm an assistant Attorney General with the Drug and Violent Crime Division of the Nebraska Attorney General's Office, here to offer support for both LB15 and LB97. I believe it's our hope that we would roll LB97 and LB15 together. I want to thank Senator Lautenbaugh and Senator White for working on these most important issues. Something that I have deeply invested myself in since I came to work in the Attorney General's Office in 2003, when I came to the Attorney General's Office in 2003 along with Don Kleine from Douglas County, we didn't have any computer crimes dealing with the enticement of children using computers. Frankly, I don't know if we knew that it was going on at the rate it's going on. We were successful in working with the members of the Unicameral in the past in 2004. We passed the first on-line enticement of a children's statute in 2007. We passed a statute regarding harassment or on-line harassment of minors using the Internet, so we are making significant progress in this area. At the same time as we're making progress, we are also seeing gaps, and LB97 is designed to address some of those gaps to think outside the box in some ways with addressing some of these issues. There are a potential of a couple of amendments to this. I was approached this morning by the media with regard to one concern regarding the depiction of a child in the child pornography statute. We are willing to work with them. In the child pornography statute, we actually intended to try to get rid of some of the defenses we were seeing in terms of people getting up and saying, that's not a real child. And so we tried to address that issue through the statute. We're willing to remove that language, because we didn't realize that there would be mainstream applications to that such as in a movie depicting the sexual assault of a child based upon some dramatization. LB97 goes a long way in addressing some of these concerns. It ups the penalties for possession and trafficking of child pornography. As Senator Lautenbaugh brought up, we are seeing an explosion of the distribution of child pornography being distributed through what we call peer to peer networks where usually you think of music or movies being traded. Again, we have ongoing investigations that have identified 10,000 IP addresses actively trading child pornography here in Nebraska. We upped the penalties for the continuing proliferation of on-line enticement. One of the handouts I gave you basically goes through some of the things that we're seeing in the on-line enticement world, cases that we have successfully prosecuted and arresting these people. I want to thank the committee very much for addressing this; Senators Lautenbaugh and White for addressing the issues here. We love the amendment to LB15, and we hope that this body would jointly put those together and send them to the floor for their consideration. Thank you. And I'd be happy to answer any questions you might have. [LB97 LB15]

SENATOR ASHFORD: Any questions of Corey? Yes, Senator Coash. [LB97 LB15]

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SENATOR COASH: Thank you, Chairman. Corey, the fines here pretty significantly increased. Can you explain a little bit why you think it's important these...or not the fines, but the penalties, I'm sorry...the penalties need to be increased to this level. [LB97 LB15]

COREY O'BRIEN: I appreciate the question, Senator. The penalties for, particularly, distribution and possession of child pornography, I think if you recall back probably four or five years ago, Senator Chambers, who I know is here, was very much in favor, I think, at the time of increasing the penalties for possession of child pornography. We believe that the law that we have right now with regard to distribution and possession of child pornography actually is a little low for the entire country. What we've really tried to do is match in significant ways the existing penalties for distribution and possession of child pornography with what already exists in the federal system. Quite frankly, the county attorneys, myself were tired of having to rely upon the federal government to do work that we should be doing ourselves. The other reason why we believe that we need to address these issues is because one, this is an area where we can be proactive. With regard to child pornography and with regard to enticement of children, we know that through research that's been done, clinical research that's been done, that eventually the fantasies that they're living on the computer through child pornography and on-line enticement are eventually going to involve the sexual assault of a real child. We can actually stop that, hopefully, from happening by cutting the head off before they actually harm a real child, so that's why it's so significant that we identify these people, make them sex offenders, incarcerate them if they're not able to control their fantasies, and to address those issues. So that's essentially why we are aiming at the additional penalties in this particular bill. [LB97 LB15]

SENATOR COASH: Thank you. [LB97 LB15]

SENATOR ASHFORD: Yes, Senator Council. [LB97 LB15]

SENATOR COUNCIL: Yes, Mr. O'Brien. In AM391, and it's no different in the original bill, and my question is, on the duty to report a change, it's the duty is to report within the next working day while I don't...the registered sex offender doesn't have to report a change in name for five days. Is there any reason for the distinction there? [LB97 LB15]

COREY O'BRIEN: When we put together LB97, we tried to keep it consistent in LB97 that they have five days to report. In LB15, Senator White indicated that the next working day...and we wanted to stay consistent with the urges of Senator White, but certainly it's an issue that I think...I don't know, I haven't talked to Senator White about it, that we'd be willing to address and, you know, make it consistent with other requirements. I don't know if he has a specific reason why we wanted it to be the next working day or not. I would not be opposed personally to doing that, but again, I haven't

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talked to Senator White on whether or not that's something that can be worked out in regard to the reporting requirement, whether it be the next day or five days. [LB97 LB15]

SENATOR COUNCIL: Okay, and the other question I have is with regard to LB97, and the...any person required to register under the Sex Offender Registry, I understand, but the no person shall knowingly communicate...I mean, there have been these recent cases of these juveniles who have been transmitting what has been determined to be pornographic depictions on their iPods and their BlackBerries and... [LB97 LB15]

COREY O'BRIEN: It's called "sexting." [LB97 LB15]

SENATOR COUNCIL: Pardon? [LB97 LB15]

COREY O'BRIEN: It's called "sexting." Right. [LB97 LB15]

SENATOR COUNCIL: "Sexting," okay. Under LB97, those individuals are subject to these enhanced penalties as well if...I mean, in fact, it wasn't...was it here in Nebraska where the 14-year...no, it wasn't Nebraska. But there were two 14-year-olds texting this, you know, a picture of another classmate back and forth, and they were charged as adults, and would have been subjected to whatever that state's comparable penalties would be here. And what...taking into account the maturity level of these young people, and what kind of safeguards do we have that when we have these young people who clearly don't have the maturity to understand the significance of this, being subjected to these kind of penalties? [LB97 LB15]

COREY O'BRIEN: Well, and Senator, I really appreciate this question, because it couldn't be more timely. We are seeing an absolute explosion of manufactured, self-manufactured child pornography. Recently, I went and gave a presentation up in Omaha at a middle school, and I asked all the kids, how many of them have taken pictures of themselves naked? And it was...it just blew me away. And they're doing it; they're sending it to their boyfriends. Recently, there was a story in the paper of a young lady who broke up with the boyfriend that she sent the picture to, and she ended up killing herself and committing suicide. It is an absolute concern of every county attorney out there, and what to do with these kids. I think that every county attorney I talked to, I mean, right now, they honestly...under the technical definition "have committed manufacture of child pornography or distribution of child pornography," I don't know of a single case in Nebraska where anybody has been charged with that in a juvenile level. I personally would never charge someone where they were going to face these kind of penalties for doing something like that, because that, again, is not a pedophile. This is where prosecutorial discretion kicks in. Quite frankly, and you're going to hear from some other county attorneys here including, I think, Mr. Kleine is on his way, you know, what we do with these cases. Frankly, they need to go to juvenile court. I mean, these are bad decisionmaking cases. These are not guys or kids that need to be locked up

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forever and ever and ever. Whether or not we need to put that in there statutorily to say, you know, some aggressive prosecutor shouldn't be charging a 14-year-old and sending them to the penitentiary for five years. I'd leave that to your discretion. My opinion is, I guess I have a lot of confidence in my brethren in the prosecution field that they would feel the same way I do. And again, we are seeing this constantly. And I think it's noteworthy that nobody has charged these juveniles with adult crimes for manufacture or distribution of child pornography. And we are sending them to juvenile court in those situations, if we're charging them at all. And, quite frankly, I've had a couple of these come across my desk, and I think it's a parenting issue, and I've left it to the parents. The parents intervene. If there's no parents or structure in that situation, then we get to the level of going to the juvenile court and maybe providing that structure in terms of rehabilitation and you know you made a mistake and, you know, intervening with the victim too and saying, don't be making these pictures. And I think there's a lot...I'll go and speak to a lot of schools. And my message to them is, stop taking these darned photographs and putting them out there all over the place, so. [LB97 LB15]

SENATOR COUNCIL: Well, perhaps it's something that needs to be addressed. And I appreciate the confidence you express in the county attorneys in the state of Nebraska. But you know, clearly that's not the wave across the nation as evidenced by the recent case where that 14-year-old was charged as an adult and would be... [LB97 LB15]

COREY O'BRIEN: And I totally disagree with that. I mean, what are you really going to gain out of putting a 14-year-old in the penitentiary for five years for a stupid mistake of sending a photograph to your boyfriend? Or what are you going to really gain by sending that young man, who, kids will be kids, showed it to his buddies and distributed. I mean, there's consequences that I tell these kids constantly, just by doing that act, once you put it out over the Internet, you can't get it back, and they're going to have to live with that forever. The colleges and universities are looking at their MySpace pages. They're seeing the pictures they're putting out there, and they're not letting them in because of the stupid things they do as kids. And I think we all as parents, as lawmakers, we need to keep continuing to get that message out. And I'm extremely passionate about it, so, thank you, Senator. I appreciate the question. [LB97 LB15]

SENATOR ASHFORD: Thank you, Corey. And then that...I'm glad Senator Council asked that question. That was my major concern, and I...maybe we can think about that issue as we go forward. Let me ask this. How many proponents of this bill do we have? And how about opponents? Okay, why don't we go on with the...thanks, Corey. Let's go on with the proponents. Mark. [LB97 LB15]

MARK YOUNG: (Exhibits 5, 6) Good afternoon. My name is Mark Young, Y-o-u-n-g, and I'm the Hall County Attorney from Grand Island. I'm here today on behalf of the Nebraska County Attorneys Association. We are in support of both LB97 and LB15, and I want to focus my comments today on the discovery portion of LB97. I have brought

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along copies of letters from two teenage girls and their mothers who are right now caught up in a situation where they were surreptitiously photographed while having their senior pictures taken. They were photographed in such a way that it's our opinion it meets the definition of child pornography. When I first started meeting with the families involved, the immediate question they had was, will the defense have access to these? And I think these letters are very eloquent about the impact it's had on them as they've attempted to enjoy their senior year and all their accomplishments in the threat that this might get out somehow. I've also provided you with a copy of a case that I would submit shows that this is a very real issue. State v. Lovette was a case from Grand Island where we had an individual who's in his fifties from Colorado who made computer contact with a 13-year-old girl in rural Hall County, Nebraska, actually drove to Nebraska several times to have sex with her; also encouraged her to perform essentially telephone sex and kept tapes of that. When the search warrant was served on his home in Colorado, they recovered not only photographs of the victim in Nebraska, but photographs of two 14-year-old girls, one from Ohio, and one from Kansas. We had recently...at the time that case was going on, ascertained that the public defender's office in Grand Island had a policy where they turned over their entire evidentiary discovery file to the defendant for their long-term possession, and, in fact, they stipulated to that in his hearing. Now, in this particular case, the judge did enter a protective order, but it was discretionary with the judge. And I'm here to tell you in three of the other courtrooms in my jurisdiction I don't think I would have gotten that protection order ordered. There's no reason that...you know, I think LB97 does a great job of crafting a solution so that individuals' defense lawyers, experts will have access to this and even defendants, for example, if they want to look at the picture to ascertain that it is their house or something. But keeping it out of the hands of the defendants and others, one of the problems we had in Grand Island was, we had copascope photographs, very close photographs of female private parts that were in the jail, and were getting passed around from defendant to defendant in the jail. And our public...well, the only way to protect that is through this bill. I'd be happy to answer any questions. Thank you. [LB97 LB15]

SENATOR ASHFORD: Any questions of Mark? Seeing none, thank you, Mark. [LB97 LB15]

MARK YOUNG: Thank you. [LB97 LB15]

SENATOR ASHFORD: Other proponents? [LB97 LB15]

ED SEXTON: Good afternoon, senators. My name is Ed Sexton, S-e-x-t-o-n, and I'm here to speak in support of LB97. I have over 33 years of experience in law enforcement, and I currently work for the Attorney General's Office as an investigator in the criminal bureau. Since 1997, my primary assignment has been the investigation of crimes on the Internet and as a computer analyst. With the enactment of the Enticement

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Statute in 2004, began spending time on-line as a young teenager. Less than a month after the statute became law, I made my first arrest when a 42-year-old man wanted to meet a 13-year-old girl...me, and take me under his wing to teach me about sex. Somebody learned a lesson that night. Since that first arrest, I've been involved in the investigation of numerous crimes where kids have been contacted via the Internet and victimized sexually. Cases like the 31-year-old guy who used on-line conversations to intimidate and blackmail a 15-year-old boy into having sex with him, and then to pose for sexually explicit photos. Or the case where we examined a computer belonging to a former high school all-star athlete who was working in the regional center adolescent care unit. This led us to ten teenage girls, six of them we felt that he had probably had sex with. He was ultimately charged in four counties in southeast Nebraska, and you should know, he had children with at least two of his 15-year-old victims. Having to talk to these kids and seeing the impact upon their lives is one of the reasons that I and other law enforcement officers place ourselves between these on-line predators and our kids. These predators don't always start out by asking to meet for sex. These cases take time to develop because of the grooming process, and they can be lengthy investigations, but they're satisfying because they prevent real kids from being victimized. In one of the more recent cases, we arrested an individual who had hitched a ride about 60 miles to meet a 15-year-old girl in order to have sex with her in a laundromat rest room. He stated he liked them young. He bragged about having sex with a 13-year-old girl. He fantasized about having an 11-year-old girl, and he told one person that he had had sex with his daughter. She was four years of age at the time. Thankfully, we think that's a fantasy too. Right now, registered sex offenders are found on the Internet. One offender received probation after his conviction and even though his probation terms included a prohibition on the use of Internet, he chatted with almost three-fourths of the investigators going through a class for on-line undercover investigations when those investigators were on-line as kids. He had accounts on different networking sites, and he was actively using those sites to keep in touch with friends under the age of 18. The Internet, cell phones, all of these are phenomenal tools, but also seems that the tales of Pandora's box was written with the Internet in mind. That box has been opened, and I doubt if it will ever be closed. All the evils on the Internet are finding victims, and too many times those victims are kids. This legislation is going to give us some more tools to prevent real kids from becoming the prey of individuals out for one thing, the sexual exploitation of our children. I thank you for your time and am willing to answer any questions. [LB97 LB15]

SENATOR ASHFORD: Thank you. Thanks for your service. Any questions? Seeing none, thanks. Next proponent? [LB97 LB15]

CRAIG WIECH: (Exhibit 7) Senator Ashford, members of the Judiciary Committee, I'm Detective Craig Wiech, Bellevue Police Department, and I have been investigating a...multiple crimes of sexual assaults from one person in Bellevue, Nebraska. After a 13-year-old girl had come to the police department, a 21-year-old male, after probable

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cause was established, was arrested and subsequently has currently seven felony accounts of sexual assault and a misdemeanor for debauching a minor. Those sexual assaults range from first-degree sexual assault, attempted first-degree sexual assault, and sex with a child in those cases. While I was trying to corroborate information, I made contact with two other females in reference to the first girl. We learned that those two girls were also victims of the same person. I learned through search warrants of the suspect's computer and accessing local media, that 14 other victims were involved with this person. I also learned that MySpace was a big proponent in how this person contacted his victims. My suspect had contacted 20 other females...21 other females in Nebraska by using MySpace, and also had tried to make contact with 34 other females through MySpace, but those females did not reply. I learned while investigating that, within minutes, my suspect would ask for sex from these juvenile females. One of the conversations consisted of the suspect asking 11 times for a juvenile victim to meet him, sneak out of the house, and he was refused in every occasion. My suspect also had contact with a Level 3 sex offender who is also a male. The sex offender offered my suspect money for sexual acts through MySpace. I know that MySpace requires all users to be at least 14 years old and at least three of my victims were 13 or younger. In trying to get information in reference to MySpace, I had two judges, one county judge and a district judge, look at my search warrants, and they were willing to sign those, but because Nebraska law does not recognize those search warrants in other states, the information were to come back, they refused to sign it based on possible appellate overturn of the search warrants. Therefore, I had to get a federal 2703(d) order from the Attorney General's Office. Right now I have 14 victims of sexual assault with one person. Seven of those have been related in felony charges. Two of those were victimized in Lincoln; one in Fremont; one in Gretna; one was in Cass County who now resides in Alliance, Nebraska, and the statute of limitations has run out in two of those victims. I'd be happy to answer any questions you may have at this time. [LB97 LB15]

SENATOR ASHFORD: Any questions of Craig? Thanks. Next proponent? Opponent? Do we have any neutral testifiers? We have some opponents. [LB97 LB15]

COLEEN NIELSEN: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Coleen Nielsen spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. My opposition is very specific to LB97. In particular, it is to Mr. Young's testimony regarding discovery on page 17 of that bill, Section 14. Essentially, what this bill provides is that all courts and administrative agencies shall unequivocally deny any request by the defendant for the pictures or visual depictions that this...is the subject of this bill. And it does provide, as Mr. Young testified, some availability to the defendant, but we believe that this information and those decisions shouldn't be left to the state, but should rather be left with the court system. And so on those grounds, we would oppose that section. And I'd be happy to answer any questions. [LB97 LB15]

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SENATOR ASHFORD: Any questions of Coleen? Coleen, thanks. Any other opponents? [LB97 LB15]

AMY MILLER: (Exhibits 8, 9) Good afternoon, my name is Amy Miller. I'm the attorney and representative for ACLU Nebraska, the constitutional organization. We oppose only portions of LB97. We oppose the substantive sections regarding computer use by former sex offenders. Specifically, at pages 19 through 21, limiting the ability of former sex offenders to go into networking, chat rooms, send instant messages. We object to this for the same reasons that we've appeared in front of this committee before, continuing to stigmatize and ostracize individuals who already are facing barriers in returning to society is poor public policy. You're receiving, as part of my testimony, facts and figures both from the Bureau of Justice that say the recidivism rates for sex offenders are actually no higher than any other type of offender, and placing specific types of restrictions on them therefore is not fair. There's also information there from psychologists, social workers, and psychiatrists indicating that the more restrictions you place for their ability to rehabilitate and reaccess society, the more likely that you are ensuring that they will fail. In addition, we oppose the sections to be found on page 24 and 25 of the bill, and this is a more substantive concern regarding the Fourth Amendment and privacy concerns wherein sex offenders would "sign a consent form that is required." It's not consent if you're required to do it under threat of arrest. By requiring that sex offenders turn over access to their computer at any time without a search warrant lies squarely in the face of the Fourth Amendment. There's not individualized particular suspicion that the sex offender has engaged in bad conduct with that computer. The government has no business getting access to it. This is already under challenge in Indiana. The ACLU has sued in a case called Doe v. Marion County. It's still in trial court, but I've given you the citation on page 2. Many other states are considering legislation exactly like this. We would suggest that Nebraska does not need to join the list of people that are going to be sued over this privacy violation, particularly because the language goes so far as to say, any computer where the offender may have access to. This means that the computer of the wife, the minister, his employer, his attorney's office if he stops by and uses the cell phone, BlackBerry or computer in someone else's office suddenly also becomes open for invasive searches without any individual particularized suspicion. For those reasons, we oppose those sections of LB97. I've given you also some generic information, again regarding many of the myths around sex offenders. To sort of leap on the bandwagon to pass Tough on Crime statutes is poor public policy, and we urge you to not pass those portions of LB97. [LB97 LB15]

SENATOR ASHFORD: Any questions? Seeing none, thank you. [LB97 LB15]

AMY MILLER: Thank you. [LB97 LB15]

SENATOR ASHFORD: Next opponent. Neutral? [LB97 LB15]

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KORBY GILBERTSON: (Exhibit 10) Chairman Ashford, members of the committee, for the record my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Motion Picture Association of America. MPAA is a part of a larger coalition referred to as a media coalition, and they are primarily organized to protect First Amendment rights for mainstream media, and I have a letter to present to the committee. The head of the letter was a memo in opposition to LB97. I have spoken with Senator Lautenbaugh and also representatives from the Attorney General's Office. Mr. O'Brien referenced these discussions earlier. We have specific concerns with the legislation that appear on pages 9, 12, and 13 where the legislation specifically discusses instances where someone may be in a video or other media that appears to be a child. This issue has been dealt with by the United States Supreme Court on a number of issues, and has clearly said that you cannot make a blanket restriction on the appearance of, to be a minor, because that would bring in mainstream media and would not necessarily meet the Miller test of obscenity. I will let you read the letter instead of taking up more of your time, and I'd be happy to try to address any questions. [LB97 LB15]

SENATOR ASHFORD: Any questions? Thank you. [LB97 LB15]

KORBY GILBERTSON: Thank you. [LB97 LB15]

SENATOR ASHFORD: Senator Lautenbaugh, Senator White. [LB97 LB15]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford and members of the committee. I think we did have a good discussion here today, and I appreciate a lot of the testifiers in coming forward on this. Addressing the concerns raised by Senator Council, I think they're very valid. And while I'm appreciative of the hard work our prosecutors do, and the Attorney General's Office does, it is not my intent in bringing this bill to criminalize "sexting," if you will. And if we need to address it rather than rely on the discretion of future prosecutors and whatnot, I'm happy to do that, because that was not my intent. I am happy to work with Korby's clients and the media, mainstream media, regarding their First Amendment concerns on this as well. I do believe some of the concerns that were raised here regarding the ongoing nature of these restrictions and restrictions from access to computers, I don't believe we have a constitutional right to computer access. And just as surely as we can restrict felons from having firearms, I believe we can keep predators from using tools of the trade, if you will, in this case, electronic communication media. And as I indicated before, I have to confess to a certain revulsion, and I don't think this sets me apart when we discuss people who have these convictions. And these are ongoing restrictions, and it is good to believe in rehabilitation, and the fact that people can change. In this area, I don't buy that. I don't think that anyone who thought this was a good idea once actually changes their view on it. And that said, even with the information distributed by the ACLU that maybe there is

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only a one in five chance of being a recidivist, that's one in five chances of going after another child, and I just don't see that as acceptable odds; I don't like those odds, if you will. And I just believe this bill is necessary. In some ways, it is harsh, but I don't think it is too harsh. I think it is proper, and I would ask you to look upon it favorably. [LB97 LB15]

SENATOR ASHFORD: Yes, Senator. [LB97 LB15]

SENATOR LATHROP: Just as a practical matter, and I don't know...I'm lucky if I can e-mail something or get on the Internet and read a news section. So I don't know. But if you...if we make someone register a number, is there a number that shows up? If I e-mail you, is there a number that shows up that identifies it as me or my computer? [LB97 LB15]

SENATOR LAUTENBAUGH: I think it comes down to the IP address and whether or not it's a static IP address or not. I think there are other forms of identification for where electronic communications are coming from, but that's beyond my expertise. [LB97 LB15]

SENATOR LATHROP: I don't know if it was you or Senator White that said that a mother ought to be able to look on the computer to see where their kid has been and compare that to a list of people whose addresses are registered. It looks like Senator White is shaking his head, so I may be...maybe this is his question, but can you do that? [LB97 LB15]

SENATOR LAUTENBAUGH: I don't know. [LB97 LB15]

SENATOR LATHROP: Okay. Maybe Senator White does, and I'll ask him when he comes up. [LB97 LB15]

SENATOR ASHFORD: Thank you. Thanks, Senator Lautenbaugh. [LB97 LB15]

SENATOR LATHROP: Thanks. [LB97 LB15]

SENATOR LAUTENBAUGH: Thank you. [LB97 LB15]

SENATOR ASHFORD: Senator White. [LB97 LB15]

SENATOR WHITE: Thank you, Mr. Chairman. Yes, it can be done. Can I do it? No. But a nominally competent person with computers can and they regularly do. It's called capturing the e-mail address, so any time there's a communication from one computer to another, you can, and there are programs and methods that parents and others can use, capture that information, and then you can... [LB97 LB15]

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SENATOR LATHROP: And your thought is, is that if we make this the law, then mothers, fathers, parents that are concerned can buy the equipment and then can look or download the IP addresses of all these predators and compare it to where their kids have been and will know if they got a problem. [LB97 LB15]

SENATOR WHITE: Well, they can run it against the Registered Sex Offender database. And one of the reasons we like that approach...I like that approach is, I believe it's constitutional without question, that if we can tell them, you can't live near a school, you have to tell us their address, we can tell them...register your computers. That's where they hunt now. They use the computers to hunt, and it doesn't restrict them from going on any site or restrict what they can say or who they can talk to which does at least implicate the constitution. It simply allows people with whom they are communicating to verify who they're dealing with, and I believe that's squarely within the constitution. [LB97 LB15]

SENATOR LATHROP: Yeah, I don't have a quarrel with the constitutionality. I just didn't understand the technical part, and it makes perfect sense to me. [LB97 LB15]

SENATOR WHITE: And Senator Council, you asked about one day, and that is an important part of the bill. You...at least I am a mail person, and the law thinks in terms of, you know, 30 days to answer, a week of mail services. That's not how this generation or these folks think. They think in nanoseconds. There are dozens, if not hundreds of e-mail addresses, and if we gave let's say a week, even...what we would consider very quick, a week. I can move that every six days and never...never have a registrable number because I can just keep it one ahead. It takes two minutes, I am told, to change your e-mail address on a computer and, therefore, the rapid recording of that data is essential for it to be meaningful and to be used to prevent abuse. [LB97 LB15]

SENATOR COUNCIL: And I guess the...it kind of goes to the other question, though. I mean, what did the one day, if it's that quick and can occur that fast, it may... [LB97 LB15]

SENATOR WHITE: Well, there's a better way. We could make it an offense to use your computer unless you registered the identifier. You cannot use a computer that you have not registered as an identifier, and you must register it. I mean, and that way before they can lawfully go on-line and use any computer, it has to be a registered computer. [LB97 LB15]

SENATOR COUNCIL: Okay, but that gets to the point that was being made that if you have a registered sex offender who uses Senator McGill's computer... [LB97 LB15]

SENATOR WHITE: Or a library computer. [LB97 LB15]

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SENATOR COUNCIL: ...or a library computer or a WiFi location that has computers. [LB97 LB15]

SENATOR WHITE: Yeah, and we'll never get all ills with one law, Senator, but I would tell you in many cases, the filters on library computers, other people going back and looking at the history to see what is communicated makes them much more vulnerable to discovery through that method. If you're going to engage in this kind of behavior, you don't want other people to have access to the computer you're using for this kind of behavior normally, because, again, it can be uncovered, and then, believe me, if somebody was using my computer to look at child pornography and I found out, I would...there would be an investigation. So that's why it won't solve all problems, but they're much more exposed if they're using public computers or other computers. [LB97 LB15]

SENATOR COUNCIL: Okay. And your comments with regard to the constitutional issues, I understand to be limited to LB15. [LB97 LB15]

SENATOR WHITE: Yeah, I'm talking about the provision that says, and... [LB97 LB15]

SENATOR COUNCIL: You have to register your address. [LB97 LB15]

SENATOR WHITE: ...right. And another thing is that what this does is it holds the individual responsible, not the computer. In other words, the individual must register the computer number. It's a violation if they use a...they don't register it, and I would recommend you actually look at within one day or making it that it's illegal to use a computer unless they've registered the number. And that may even close it tighter. [LB97 LB15]

SENATOR COUNCIL: Okay. Thank you. [LB97 LB15]

SENATOR ASHFORD: Senator Lathrop. [LB97 LB15]

SENATOR LATHROP: Are these numbers from the e-mail account from the computer or from the Cox Cable? [LB97 LB15]

SENATOR WHITE: Well, I think they can be different ones. But my understanding is, most of the communications is going to be at least through an e-mail account number. For example, it'd be like Tom White@Nebraskagov... [LB97 LB15]

SENATOR LATHROP: JoinTomWhite.com [LB97 LB15]

SENATOR WHITE: That one, yeah. (Laughter) No, but it would be that...it would be the

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e-mail provider. [LB97 LB15]

SENATOR LATHROP: You can literally set those up every five minutes, though, can't you? [LB97 LB15]

SENATOR WHITE: Yeah, every two...yeah, I mean, until you run out of places. And that would make it an offense to use it. In other words, it would help law enforcement. If, for example, one of the detectives was approached by somebody clearly, you know, soliciting sex, you doing...who was a sex offender, and they track them down, they find out who he is, and he's not registered that computer, they don't have to wait until he says something inappropriate. At that point, he or she has already violated the law. [LB97 LB15]

SENATOR LATHROP: Yeah, I probably need to talk to the AG's Office and get the, how does this all happen so that I understand how the law fits on top of what the practice is, because I don't know if they can set up...they can go and say, TomWhite@Yahoo.com and talk to somebody on a chat or wherever they go, and then the next day or a half hour later they go to TomWhite@gmail.com and they do the same thing. I mean, they can bounce all over and set up an endless number of these things, and how does anybody even know if they're doing it, Tom, or...? [LB97 LB15]

SENATOR WHITE: Yeah, the bill...one of the problems they have is, of course, they have to have people get back to them. If I change my address, the people that they're trying to seduce aren't going to be able to get back to them. So they have to have some continuity too, in there because, you know, they can't just keep moving around. [LB97 LB15]

SENATOR LATHROP: Got it. Okay, that helps. Thanks. [LB97 LB15]

SENATOR ASHFORD: (See also Exhibit 32) Thanks, Senator White. That concludes the hearing on the two bills, LB97 and LB15. We will proceed to LB496. Senator Fulton. [LB97 LB15]

SENATOR FULTON: Ready? []

SENATOR ASHFORD: Yes, sir. [LB496]

SENATOR FULTON: (Exhibit 11) Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I bring before you LB496. This bill allows municipalities to use traffic light cameras to enforce red light violations. According to the Insurance Institute for Highway Safety, 22 percent of all traffic accidents in the United States are caused by drivers running red lights. Every year these accidents kill some 800 people and rack up an estimated \$7 billion in property

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damage, medical bills, lost productivity, and insurance hikes. This sort of traffic violation seems to be on the rise for...in many municipalities red light violations have increased by 10 percent or more since the 1980s. I therefore bring this measure to (1) enhance public safety; (2) save local tax dollars; and (3) to save consumers money with respect to decreased insurance premiums, reduction of property damage, etcetera by using existing technology. Section 7 of the green copy of your bill sets forth the process by which the camera system captures the violation and by which the driver is assessed a fee. To constitute sufficient evidence of a violation the municipality must submit two photographs, video images or digital images of the violation, a certification of the vehicle registration or positive identification of the driver, or...I'm sorry, and an affidavit that the traffic camera was functioning properly at the time the violation occurred. This evidence is then reviewed by the municipality to ensure that a violation occurred. Then notice, including the time and location of the violation, copies of the photos, and the amount of the civil fee, not to exceed \$100, is sent to the owner of the vehicle. The owner then has the option of contesting the violation in writing. If the violation is still determined to have occurred then the owner may request an administrative hearing. If the owner was not the driver at the time of the violation, then the owner may submit a sworn affidavit detailing the name and address of the actual driver to whom the municipality may bring action. If the owner fails to submit a timely request for administrative hearing or fails to pay the assessed fine in a timely manner, then the municipality may bring a civil action to collect the fine. It is important to note that this legislation as amended by AM58, which I've handed out, does not assess any points to the driver for a red light violation, thus avoiding a due process concern pertinent to a criminal violation. The bill is also predicated on the fee being assessed to the identified driver of the vehicle. Other jurisdictions have found this to be a necessary requirement for traffic light violations. Concluding, LB496 affords our municipalities the ability to use existing technology to better utilize police forces and to greater ensure the public safety. To quote Seventh Circuit Court Judge, Frank Easterbrook, "A system of photographic evidence reduces the costs of law enforcement and increases the proportion of all traffic offenses detected. These benefits can be achieved only if the owner is held responsible." With its passage, Nebraska will grant permission to its municipalities to join over 380 jurisdictions across the country utilizing this technology, a technology that according to recent studies conducted by the Insurance Institute of Highway Safety reduces red light violations by 40 to 50 percent and injury crashes by 25 to 30 percent. I respectfully request your consideration in advancing this bill forward. Thank you. [LB496]

SENATOR LATHROP: Thank you, Senator Fulton. Any questions? I don't see any. [LB496]

SENATOR COUNCIL: I just have one. [LB496]

SENATOR LATHROP: Oh, I'm sorry, Senator Council. [LB496]

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SENATOR COUNCIL: Senator, I've been handed volumes of information here. And I must first state that I'm not familiar with the entity, but I assume they have some validity and this best Highway Safety Practices Institute. And you're talking about increasing safety. And they suggest that there's ample evidence that intersections at which ticket cameras are installed become more dangerous. Have you or those who are urging the passage of this legislation done any research into those? [LB496]

SENATOR FULTON: I have and I believe that there will be those who testify after me who could probably speak more intelligently to that particular report. I'm not overly familiar with the group. But the...I have seen studies and I've also been made aware of studies, which I have not delved into, I'll freely admit that, which seem to contradict what the Insurance Institute for Highway Safety are indicating. But the data that I have seen far outweighs that which contradicts. So I'm not going to get into a statistical argument or argument on how a particular study was conducted. But the information I have seen seems to indicate that public safety is enhanced. What's more I just look at it anecdotally, it seems to make sense that people are under the impression that they're going to get busted for running a red light more readily because of technology that's being utilized to enforce the law, then it would stand to reason that they would be less apt to break the law. [LB496]

SENATOR COUNCIL: I have no further questions. [LB496]

SENATOR LATHROP: Okay. Any other questions? Don't see any. You want to stick around and close? [LB496]

SENATOR FULTON: I think so, yes. [LB496]

SENATOR LATHROP: All right, good. First proponent of LB496. [LB496]

GREG MacLEAN: (Exhibit 12) Good afternoon, ladies and gentlemen. My name is Greg MacLean. I'm the director of Public Works for the city of Lincoln, 555 South 10th Street. I'm here to testify today on behalf of the city of Lincoln for the red light cameras. My testimony is in support of LB496 that would authorize the use of automated enforcement technology to help reduce Lincoln's and the state's red light running problem. This bill is not about raising revenues, it is about public safety. The purpose of traffic lights is to assign right of way to traffic, but this only works when motorists obey the green, yellow and red lights. Too often motorists assume that they are safe by simply accelerating through the intersection when the light turns red. It is a known fact that running red lights is a major cause of urban crashes. Due to fiscal and staffing constraints, only a fraction of the total urban violators are apprehended by conventional police enforcement strategies. Lincoln and other Nebraska communities need this legislative action to increase safety, deter potential red light runners, and apprehend the deliberate violators. Deliberate running of red lights is becoming a common occurrence with deadly

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consequences nationally. The monetary loss of such crashes exceeds \$14 billion annually, and more than 15 percent of the...50 percent of the fatalities are other motorists and pedestrians and cyclists. State of Nebraska's three year crash data for '05-07 shows these crashes have cost the public an estimated \$920 million. That's an average of \$306 million annually. The city of Lincoln's three year crash data for '06-08 involving traffic signal violations shows an occurrence of 740 total crashes, including 1 fatal, and 336 injury crashes. The total monetary loss is estimated at \$30 million or an average of \$10 million annually. Running red lights is a national, state and local safety problem that demands our attention. Fortunately, there is proven camera technology that can help us create a safer driving environment. Red light cameras can automatically photograph vehicles that are driven through red lights. These cameras are connected to traffic signal and sensors in the roadway and the cameras are activated to photograph vehicles passing over the sensors after a light has turned red. So only the deliberate and blatant offenders are recorded. Lincoln's intersection cameras are used...existing intersection cameras are used solely to monitor conditions for traffic safety and they cannot currently be used for automated or remote enforcement. It is true that some jurisdictions who have utilized red light cameras now are removing them, however, it is not because they are unpopular or ineffective, it is generally because they have been so effective that they are no longer needed. Although the big brother issues raised by some opponents automated enforcement technology, public opinion surveys consistently reveal that over 75 percent of the public accepts these technologies and have support for red light cameras. Scientific research shows that red light cameras are an effective tool for reducing red light violations and crashes. Automated camera enforcement is broadly supported nationally and is being used in over 300 communities in 24 states. Nebraska could save over \$300 million annually. The approval and adoption of LB496 is critical for the safety, security and economic well-being of our state and local communities. And we hereby request your favorable consideration of LB496. [LB496]

SENATOR LATHROP: Thank you for your testimony. Are there any questions? I don't see any. Thanks for coming down today. [LB496]

GREG MacLEAN: Okay, thank you. [LB496]

SENATOR LATHROP: Any other proponents wishing to testify? [LB496]

JOHN McQUINN: (Exhibits 13 and 14) Members of the committee, my name is John McQuinn. I'm employed by the city of Lincoln as a chief assistant city prosecutor in charge of the Prosecution Division. I'm here today to just provide you some basic information regarding the practice and procedure for the implementation of and enforcement for automated traffic enforcement systems. The page is circulating the Seventh Circuit case that was referred to, Ildris v. City of Chicago, it upheld, in 2009, Chicago's automated traffic enforcement ordinance. Provisions of LB496 are taken from

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a variety of legislation in other jurisdictions--Chicago, Illinois; Davenport, Iowa; Texas and Oregon were the primary resources. Adoption of this bill and Sections 1 and 6 provides the authority to local subdivisions...political subdivisions to pass ordinances or regulations for the system. It's important that these sections are included because when the Omaha District Court for Douglas County struck down Omaha's enforcement ordinance it was stricken because it did not comply with state statute. This would take care of that issue. That issue has also come up in a couple of other jurisdictions, primarily Minnesota is one that is cited frequently. There are no points assessed, as previously mentioned by Senator Fulton. The automated traffic system can be installed by private contractors or by the government entity itself. And finally, the question of whether or not there are constitutional issues set forth in Section 7. The individual can challenge to an appointed examiner, if they're not satisfied there, to an administrative hearing officer. At that point their resolve would be through the district court, just like it is for any other administrative process. Judge Easterbrook, in the Idris case, on page 7 stated, "Photographs are at least as reliable as live testimony and administrative decisions can be made on paper or with photographs without regard to the hearsay rule." The \$100 maximum for the civil fee is to cover administrative costs only. That's my time. If there are any questions and I may have time, I'd be happy to answer them. [LB496]

SENATOR LATHROP: Thank you. Committee have any questions? I don't see any. [LB496]

JOHN McQUINN: Thank you. [LB496]

SENATOR LATHROP: Must have been thorough. Thank you. Chief, welcome to the committee. [LB496]

TOM CASADY: Good afternoon, senators. I'm the friendly local police chief in Lincoln. This may surprise you to hear this from me but we do not care one bit about issuing traffic tickets. Life will be considerably better for the Police Department if we never had to issue another ticket. There's only one reason that we do issue tickets, and that's to promote traffic safety. You know there's a place here in Lincoln that I still slow down to this day, it's 42nd and Vine Street, because of being pulled over by a Lincoln Police Officer in about 1970. It still influences my behavior and that's what traffic enforcement is about, it's about making people think twice before they speed or before they run through a red light. And I know that photo enforcement is peculiarly effective in doing that for red light running. My hope is that there will be a day here in Lincoln at some point in time where the automatic reflex of drivers when the light turns yellow is to move their foot towards the brake pedal instead of towards the accelerator. But I think anyone that drives in this city or any other city in this state can tell you that that's just not the case now. Far too many people are immediately thinking about mashing the accelerator and trying to make it through that yellow or red light. This is not the case in my

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experience in communities that have photo enforcement. Certainly it's not the case when I drive in Boulder, Colorado, I'm watching them very closely. I watch it closely all the time, but I'm particularly thinking about camera enforcement when I'm in the Phoenix metropolitan area, where most of the municipalities are doing photo enforcement. So I think it's the deterrent effect of red light cameras more than it is any savings in law enforcement resources. And I think that deterrent effect protects people and that's what we're all about. Now if you can picture for just a moment the intersection of 27th and Cornhusker, here in Lincoln, or for that matter 72nd and Dodge in Omaha, if you're a police officer and the element of the crime of running a red light, by the way, or the offense is to enter the intersection after the light has turned red. The intersection is defined either by the back line of the crosswalk or by the curb lines extended, depending on whether there is a crosswalk or not. Where would you position yourself so you could see that violation occur if you're a police officer and the chief had told you that he wants you to do something in one of our most dangerous accident intersections, 27th and Cornhusker. You'd have to be in a position almost perpendicular to that crosswalk line so that you could see the violation and be able to testify about it. And if you saw one of those violations, how in the world would you get out into traffic to catch the violator? That's an eight lane by eight lane intersection, virtually impossible. It's very, very difficult to write red light tickets, unlike speeding where we can clock you from a few blocks away. We can catch you coming over the hill before you've had a chance to see us. You can't do that with traffic light enforcement. And that's the reason that it's so difficult. We write about 100,000 tickets a year in Lincoln, the Lincoln Police Department does, 3,000 of those, just under 3,000 last year were for red light violations. And that's the reason. It's not lack of interest, it's the difficulty of doing it. And this is one area where camera enforcement is just peculiarly effective. Thank you. [LB496]

SENATOR ASHFORD: Thanks, Chief. Senator Coash. [LB496]

SENATOR COASH: Thank you, Chairman. Thank you, Chief. Your comments on the deterrent effect of these cameras peak my interest as well. Should we just get little fake cameras and put them on all the intersections or...(laughter) [LB496]

TOM CASADY: Well,... [LB496]

SENATOR COASH: Just make people think, I mean if it's the deterrent that works, maybe that's the approach. [LB496]

TOM CASADY: You'd be surprised the number of fake cameras that are around, not traffic cameras necessarily. I'm asked regularly by people in Lincoln about those cameras at intersections. And we do use cameras for monitoring traffic in the Traffic Control Center and also for activating those left turn pockets. And a lot of people think those are enforcement cameras. And I don't correct them. (Laughter) [LB496]

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SENATOR COASH: Well, I'm one of those people that thought that traffic camera was catching my plate, so it deterred my behavior. But in seriousness I do have a question. I talked with one of your counterparts in the Sheriff's Department. And I was initially supportive of this legislation because I thought this might be a way to keep law enforcement officers out of writing tickets and more on, you know, the job of protecting neighborhoods and out of traffic enforcement. And the response I got, which I was wondering if you had a comment on, was we kind of like catching traffic violators because that's how we find drugs, and that's how we run warrants and things like that. Can you speak to that at all? [LB496]

TOM CASADY: Well, that's absolutely true. Traffic stops for traffic violations like speeding lead to lots of criminal arrests. So I would agree with whatever deputy or if it was a sheriff that told you that. And I don't view this as a way of saving my resources so much as being able to use them more effectively. I can...I could station an officer at 27th and Cornhusker all day long and would be lucky if he or she didn't get killed and was able to write a handful of warning and official tickets. It's just not a productive way of doing it. And I don't think we do enough red light enforcement to create a good deterrent effect. [LB496]

SENATOR COASH: Thank you. [LB496]

SENATOR ASHFORD: Senator Council. [LB496]

SENATOR COUNCIL: Yes, thank you, Chief. And that's problematic for me because, you know, the justification is we don't do enough red light violation enforcement. And, I mean, your experience is clearly different than mine as a motorist. I have yet to have an officer have a difficulty getting me when I was (laughter) six blocks away. And, you know, I didn't see him. And they told me I did a California stop. And I had to tell him...ask him what was it. He said, I eased to the stop and he was wherever. So I don't buy that. (Laughter) I mean that to me, you know, that is not the justification. I have concern and, I guess I should have raised the concern with regard to the individual from the County Attorney's Office. First and foremost bringing me a Seventh Circuit case doesn't impress me at all. I live in the Eighth Circuit. So when you bring me a case from an Eighth Circuit judge that says that there's no constitutional violation...and I have problems with the issue of the camera holding me responsible, you know, regardless of whether I'm operating a vehicle or not. If it's an officer stop, the officer presumably has seen me operating that vehicle, pulls me over. And whether or not I turn around a corner and switch positions with the passenger or not, that officer has observed me and they can give me a ticket. I have a problem with the fact that the ticket goes to the owner of the vehicle, notwithstanding the fact that he or she hasn't committed any violation of the law. And I meant to say something to Senator Fulton. If it wasn't that big a deal then, you know, why would you say remove the loss of a point. If we're talking about the deterrent effect, what would deter me is knowing that my points are going to

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be accumulating as a result of the camera. And perhaps I haven't asked you a question but stated the opinion. I guess I'm going back to my question. I just don't understand the argument that this is a better means of enforcing, you know, red light...I mean, I understand that you can't have an officer on every corner. But if, you know, if 27th and Cornhusker is the hot spot in terms of accidents caused by red light violations, then I would think that in your deployment scheme you'd deploy more officers to the 27th and Cornhusker area. [LB496]

TOM CASADY: That's one of the interesting problems, Senator Council, is that the intersections where we have the most right angle collisions caused by red light running are also the intersections that are the most difficult to do enforcement with a police officer because of their size and the traffic volume. It would be much easier for me to do, and I used to do a lot of this when I was a street police officer, to do red light enforcement at 48th and St. Paul in University Place neighborhood here in Lincoln. It's a two-lane street intersecting...well, it's now a four-lane street, at that time it was a two-lane street. It's relatively easy at an intersection like that where the traffic flow is moderate or light and the lanes are few, because first of all I can position myself in a place where I can see the violation, and second of all I can safely get out into the flow of traffic to stop the violator a few blocks away. I can't do that at 27th and Cornhusker, I can't do it at 27th and O Street, two of the intersections in Lincoln where we have the most right angle collisions where red light running is a contributing factor. [LB496]

SENATOR COUNCIL: Okay. But at 27th and Cornhusker, what is it that contributes to the high volume of red light running? Is it the length...is it the traffic signal's synchronization, are people getting caught out in the intersection trying to make left turns? I mean those are issues that can be addressed, I believe, through traffic engineering issues by... [LB496]

TOM CASADY: Yeah. [LB496]

SENATOR COUNCIL: ...better synchronization of the turn signals and the lights. I don't know that putting a red light camera there is going to necessarily reduce the number of accidents at an intersection like that. [LB496]

TOM CASADY: Well, let me clarify something first of all. It's not a violation of the law to make a left turn. If you've already entered the intersection and the light was green when you entered the intersection or yellow, you have a right to continue to use that intersection until you've passed through it. So if you've edged out to make a left turn, that's not only legal, that's exactly how you should make a left turn, if there's no left turn signal. You should move out into the intersection and then when the light turns yellow and the oncoming traffic has stopped, proceed on your way. And you have the right of way in that intersection. My own perception is the reason some of these large intersections are particularly bad spots for red light running, first of all, just the traffic

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volume, and second of all because you've got a big intersection there that's got left turn cycles for both directions, you can sit there longer than you would at 48th and St. Paul. So I think impatient people know that if they do what they should do, which is the light is yellow, I can safely stop and I will, instead they're kind of encouraged to think, yeah, but then I'll have to, you know, it will take me another minute and a half, so I'm going to jam the accelerator and count on the other people that are on the cross street to know that people run this red light, so they'll be watching for me. [LB496]

SENATOR COUNCIL: Okay. Well, what happens, in the scenario you just described...I'm there, I'm out in the intersection, and presumably it's not one of those left turn signals... [LB496]

TOM CASADY: Yeah. [LB496]

SENATOR COUNCIL: ...it's just I have to inch my way out to make a left. I don't have a lane specific turn signal. I'm out there and it turns yellow and I want to go but there's a car heading in my direction who also has a yellow and lawfully can proceed through. I'm out there, the light turns red, I turn the corner, camera gets me. The camera can't distinguish whether I was in there before the light turned yellow or not. [LB496]

TOM CASADY: On the contrary, the camera does distinguish. The camera captures your vehicle entering the intersection when the light is red. If you have entered the intersection before the light was red, the camera captures that as well. So there is...these systems are set up so that there is no way that a violation occurs or is registered unless you have entered the intersection...entered the intersection, the bumper of your car, front bumper has gone into that intersection after the light was already red. If you are already in the intersection because you're waiting to make a left turn or because you entered it when the light was yellow or because the first inch of your front bumper entered it when the light was red, you're lawfully in the intersection and no violation would be registered. [LB496]

SENATOR COUNCIL: Well, that's contrary to at least some of the information we have here where I think it's the city of Philadelphia had to refund \$400,000 because the camera was activating on people too soon. [LB496]

TOM CASADY: Well, I don't know what that material is,... [LB496]

SENATOR COUNCIL: Okay. [LB496]

TOM CASADY: ...but it's probably defective software or defective camera or bad work by a contractor. [LB496]

SENATOR COUNCIL: All right, thank you. [LB496]

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SENATOR ASHFORD: Thanks, Chief. [LB496]

TOM CASADY: Thank you. [LB496]

SENATOR ASHFORD: How many more proponents do we have? Two more. How many opponents? Two. You've done it again. You've done the tie thing and it's... [LB496]

MARTY CONBOY: I actually managed to turn out all right, kind of lucked out. [LB496]

SENATOR ASHFORD: It's spectacular today, Marty. [LB496]

MARTY CONBOY: Good afternoon, senators, Chairman. My name is Marty Conboy, C-o-n-b-o-y. I'm a city prosecutor in Omaha, here as a proponent of LB496 and here to tell you that this is a bill that actually is kind of behind the times in terms of Nebraska. We have an ordinance in Omaha already that would comport with this statute. It was enacted about ten years ago. But as you've heard, there was a lawsuit filed by a senator who used to be in this body that pointed out that there were some deficiencies in our approach, primarily based on our lack of compliance with any existing state law. And I brought an editorial written about 11 years ago by Senator Chambers, then Senator Chambers, who detailed several concerns that he had about the existing Omaha plan. All of those things are here and dealt with in this bill to correct the problem. Primarily though, we were in contradiction of the state statute which did not have a system for a noncriminal enforcement of these red light violations. Having heard some of the comments, I'll address my remarks briefly to some of those. Senator Coash is exactly right when you say that you could put dummy cameras up. It's been found to be just as successful to put a sign and a box where the camera goes at all the intersections, just rotate a couple of cameras around. And I would ask, and I won't turn around, but I'll ask, you know, how many people in this room always go at or below the speed limit on the Interstate system in this state? You know, raise your hand. And I'm thinking there probably aren't a lot of hands up behind. But I said, if you looked in the rear view mirror and there were...well, we'll... [LB496]

SENATOR ASHFORD: There are a couple. [LB496]

MARTY CONBOY: Well, we'll get their names later. [LB496]

SENATOR ASHFORD: Don't look. [LB496]

MARTY CONBOY: If you look in your rear view mirror and there's a cruiser behind you, how many people go exactly the speed limit or below all the time on the highway? And the mentality is if you think you might get caught you're going to be a little more careful

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about breaking the law. Red light running is not like speeding. It's dangerous all the time. It's dangerous in and of itself. It doesn't increase danger. There's no excuse for it. It is always a risky behavior. And as much as that it is the highest cause of collisions, intersection collisions by far are the most common injury collisions. And red light camera...or red light running is the main cause. This addresses the very most serious cause of injury and fatality collisions. And that's why it is important. It was asked whether or not these increase collisions. Because if you think about it, people who are used to running red lights now all of a sudden stop and other people are slamming on their brakes to stop. And that's what happens at those busy intersections. People are in a hurry, the light is turning yellow, they race through and try and make it through the intersection to beat the red light. And that's probably the most dangerous thing of all, especially if somebody is trying to turn left or coming through early. So the point is this is a very relevant technology, but there is no data that it increases collisions. All the data has shown that as much as 50 percent it decreases injury and other collisions at intersections. It is effective as a deterrent and is less invasive than getting pulled over and having somebody detain you by the side of the road, look through your car, check you out and go through those other behaviors. This wouldn't replace that, it would certainly augment it with the idea of maybe reducing the need for having that intersection enforcement. I've been researching this for over a decade. I've spoken around the country on this issue. I'd be glad to answer any questions that you might have. [LB496]

SENATOR ASHFORD: Thanks, Marty. Any questions? Thanks. Doesn't seem like there are, but you're always available, I know that for sure, for certain. [LB496]

SENATOR LATHROP: That article from Senator Chambers, that's kind of getting yellowed. [LB496]

MARTY CONBOY: Yeah, it's kind of one of those things where it's brittle now. It's... [LB496]

SENATOR LATHROP: (Laughter) Brittle now. [LB496]

SENATOR ASHFORD: Well, save it, save it, you never know. [LB496]

SENATOR LATHROP: Well, something tells me he hasn't given up the ghost. [LB496]

MARTY CONBOY: It might be worth something, I ought to have him sign it. (Laughter) [LB496]

SENATOR ASHFORD: If it's signed it's worth something. If it's not signed it's not worth that much. [LB496]

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SENATOR LATHROP: Yeah, have him autograph it. (Laughter) [LB496]

SENATOR ASHFORD: Okay. Next...last proponent. [LB496]

LYNN REX: Senator Ashford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in support of LB496. I do think that it's important to underscore just one or two important points that were made by the testifiers ahead of me. First and foremost, this is about safety. It is not about municipalities trying to figure out how to get more money. I have no doubt that as municipalities are authorized to implement these in the years to come, and hopefully this will be the first year which we'll be able to do this, that the administrative costs and the costs for violating this and having this particular procedure occur will only be whatever is necessary to cover the cost of the actual equipment and the cost of administration. This is about safety. And I know this committee has had testifiers before you from people that have been T-boned in intersections, things have happened. Those are the kinds of things that happen when you're dealing with this. And it doesn't matter what the bill number is, those...you're looking at catastrophic type of injuries in this situation. So I do think that in the other states surrounding this that have used this technology it works very well. And additional to that, I know Chief Casady said this is not about resources from his department. But I would submit to you that police departments across the state of Nebraska do not have the kind of revenue where they can have police officers stationed at every location for the purpose of trying to actually look at red light running. And I would just caution you to also indicate that one of the things that this bill also provides a rights of appeal. It also has a procedure in play, so that for example if you look on page 11 of this bill, if you are indeed not the person, once you get the notice and you go through the hearing process, if you are not the person that in fact was sitting in the car when this occurred, you have a process in place for which you can contest that. So I'd be happy to respond to any questions that you have. [LB496]

SENATOR ASHFORD: Thanks, Lynn. Seeing none, thank you. [LB496]

LYNN REX: Thank you. [LB496]

SENATOR ASHFORD: Senator Chambers. Senator, I was sorry to see that the producer of Time for Burning passed away. Did you happen to see the article in the New York Times... [LB496]

ERNIE CHAMBERS: Yes. [LB496]

SENATOR ASHFORD: ...which referred also about your history as well. [LB496]

ERNIE CHAMBERS: (Exhibit 15) And interestingly, I hope this isn't on my time...

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[LB496]

SENATOR ASHFORD: (Laugh) No, that's all right, we'll let you go. [LB496]

ERNIE CHAMBERS: ...I was in New York and he and I both gave an interview. And he looked sickly at that time, but I didn't know how ill he actually was. So our paths crossed 40 years ago, then they crossed at the time his life was ending. And as far as I know, mine could end before I finish here. So I'm going to try to get a few things into the record. My name is Ernie Chambers. I live in Omaha, Nebraska. There is so much wrong with this bill that I can't say it all in three minutes. But I'm going to give you all enough to tantalize you and maybe you'll ask me some questions. When they talk about what is happening in other states that is irrelevant to Nebraska. First of all, there is a constitutional provision in this state that says the doors of the courthouse are open to everybody who has a grievance in order to find a remedy. Secondly, there's a constitutional provision in the Nebraska Constitution that requires equal protection of the law. The Rules of the Road begin by saying that the purpose of these rules is to provide uniformity in traffic enforcement and so forth, that the Rules of the Road are to be interpreted and construed in order to maintain this uniformity. If you were to advance a bill such as this and it became law, not only would there be a lack of uniformity between what happens in Omaha and Lincoln if they do this in other cities, the lack of uniformity is within these cities. The offense is running the red light. What they are going to say is that the method by which you detect the offense is what determines how it's handled rather than the offense itself. If I am hit with the camera, I am deprived of a judicial remedy. I have no access to the courts. I cannot get a judge to review whether or not these cameras are accurate. There is no requirement in this statute to establish the accuracy and reliability of these cameras as there is statutory requirement when it comes to the use of VASCAR, radar, any electronic radio microwave or mechanical device used to determine speed. The reason they put in place...oh, let me tell you why there's a double standard. If they get you with the camera you lose all the constitutional rights that a person has who is charged with an offense. If in that same city a police officer gives me a ticket, then I have the right to a judicial remedy, confront my accusers, the proof by the state has to be beyond a reasonable doubt, and I cannot be convicted of something that somebody else may have done. They've got to prove that I committed the offense and that has to be proved beyond a reasonable doubt. They have put in this statement that a fee is what you pay. Note, they have a penalty, a fee is compensation, emolument and is not used in a situation like this. No matter how they style it, it is a fine. A fine is a monetary imposition for punishment of an offense. So they think by changing the term from "fine" to "fee" they get away from the fact that this is in fact a crime and that the money should go to the school fund. That's what all of this talk is about. They have said...I will obey the red light, which my friends who are for this bill did not. (Laughter) [LB496]

SENATOR ASHFORD: I'm wondering if you have any points about what you were just

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talking about that you'd like to conclude. [LB496]

ERNIE CHAMBERS: On the constitutional rights. [LB496]

SENATOR ASHFORD: On the constitutional issue. [LB496]

ERNIE CHAMBERS: I'm not going to go far afield. [LB496]

SENATOR ASHFORD: Okay. [LB496]

ERNIE CHAMBERS: In this situation, Judge Lamberty quoted from a case that said, regardless of how these cities try to mischaracterize this fine, it is a penalty. The city cannot keep any of it. It has to go into the school fund. So they set up this administrative procedure to say it's not a criminal proceeding, you're not dealing with a crime, what is imposed in terms of the \$100 is not a fine. All of those things fly in the face of what the law is. The Nebraska Supreme Court ruled that a traffic infraction is a crime. That being the case, you have the right that any person accused of a crime would have. The Rules of the Road, when it comes to offenses, say that they fall into three categories--a felony, a misdemeanor, and anything not a felony or misdemeanor is a traffic infraction. The Rules of the Road say that anybody who is charged with a traffic infraction must be given a citation. They say in their statute, the proposal, that if you're going to be accused you get a notice. They don't say what the notice is. So you have to go by what the Rules of the Road would say, you must provide a citation. The Supreme Court has put in place through rule the requirements of what must be in a citation in order for it to stand as a legal complaint. You cannot get that information to put on that citation if it's by way of a camera. [LB496]

SENATOR ASHFORD: Thank you, Senator Chambers. [LB496]

ERNIE CHAMBERS: I thought there might be another question. I thought I saw a hand. [LB496]

SENATOR ASHFORD: Well, I think Senator Lathrop has one. [LB496]

ERNIE CHAMBERS: Oh, okay. [LB496]

SENATOR LATHROP: I might have one. Could we...I know that with traffic or, pardon me, with parking tickets, and I used to get a number of those down around the courthouse when I parked down there and be detained or delayed, we could handle them in the same way, couldn't we, or do you have a problem with the way the parking tickets are handled? [LB496]

ERNIE CHAMBERS: I don't...well, part...this... [LB496]

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SENATOR LATHROP: With a parking ticket it's more of an offense for the car. I suppose you could ask for a trial date on your parking ticket. But generally they send the notice out or they leave it on your car. You pay it and if you have an objection to it then you ask for a hearing and you get a trial. [LB496]

ERNIE CHAMBERS: But this is a moving violation. The violation is determined by means of a device which is not subject to judicial review. [LB496]

SENATOR LATHROP: That's a bit different because there's process and then there's the calibration. And I understand the calibration. We have to calibrate the radar gun or we have to calibrate the alcohol... [LB496]

ERNIE CHAMBERS: Yes. [LB496]

SENATOR LATHROP: ...the breath tester and demonstrate that in a trial. But if the idea was that a person can come into court and have that hearing where they can question the calibration, whether it was calibrated or tested and when and how frequently and the maintenance records and the things that you have with a Breathalyzer. You get more comfortable with this or is it a philosophical... [LB496]

ERNIE CHAMBERS: Under this you can't go to court. Here's the problem that I haven't been able to make clear. The cities want to get money from this. They are trying to get it out from under the Supreme Court ruling that a traffic infraction is a crime. That's why they put in this thing of an administrative fee. Fees are charges for governmental service or what a public employee is allowed to receive. A fee does not apply here. So they're misusing language. And Judge Lamberty had said, no matter how they try to mischaracterize this, it is a charge, it is a fine, and it has to go into the school fund. She was quoting from an existing Nebraska Supreme Court case. If you want to simplify it, you start with the fact that a traffic infraction is a crime. When that occurs, the statute that exists now says that you must be issued a citation. This tries to get around all of that by saying we're not going to call it an infraction, we'll call it a traffic signal violation or whatever it is. But it's still an infraction based on what all of the other provisions in the Rules of the Road say. So if you want to get to this, you're going to have to amend a host of statutes in the Rules of the Road, you're going to have to change definitions, you're going to have to undermine that Nebraska Supreme Court decision by changing everything that court referred to, to show why it in fact is a crime. And that... [LB496]

SENATOR LATHROP: Okay. [LB496]

ERNIE CHAMBERS: ...was not done here. [LB496]

SENATOR LATHROP: And... [LB496]

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ERNIE CHAMBERS: This is very poorly done, it's sloppily done. And when I challenged that provision in Omaha my good friend, Marty Conboy, had stated that there's nothing wrong with what they're doing. They can do it under the law. It's not unconstitutional. They had not read the constitution. They counted on what had been done in other states. But we have to look at what the Constitution of Nebraska says, what the Nebraska Supreme Court has ruled, and what the Rules of the Road for this state set out as the purpose and how that purpose is to be met. This is totally wrong. The reason I wanted to get some things into the record, and I couldn't get them all in because I didn't have the time... [LB496]

SENATOR LATHROP: Apparently we can with my question. (Laugh) [LB496]

ERNIE CHAMBERS: I'm going to sue...I'm going to challenge this in court if it is enacted into law, if the Governor signs it, and I guarantee you I will win. And if I lose, I will give \$500 to the charity that anybody wants me to give it to. And this time I will hire a lawyer. (Laughter) When I took it...here's why. When I won in Omaha, I could not get lawyer fees. So I will get somebody to stand in as the lawyer and they will get the money. I will win, I know I will because I study the law and those who brought this did not. It's the same thing that has been offered in times past. Everybody knows, based on the question you asked about what I'm comfortable with, in order for there to be equal protection of the law, if we both commit the same offense, we have to be subject to the same punishment. If I am stopped for running a red light by a cop, my license can be assessed a point. If you're stopped by a camera you're not assessed a point. We both committed the same offense but they're saying because of how yours was detected you don't have to pay by way of a point being assessed, I do. That violates equal protection of the law. It violates all the existing statutes. [LB496]

SENATOR LATHROP: And the other provision is the open courts provision. [LB496]

ERNIE CHAMBERS: Say it again. [LB496]

SENATOR LATHROP: The other is the open courts provision, and I think you told us your theory on that too. [LB496]

ERNIE CHAMBERS: Right. [LB496]

SENATOR LATHROP: Okay. [LB496]

SENATOR ASHFORD: Thank you, Senator Chambers. And that was helpful. Senator Council. [LB496]

SENATOR COUNCIL: Just a quick question. Senator Chambers, you were present

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when I was asking the question about the safety argument. [LB496]

ERNIE CHAMBERS: Yes. [LB496]

SENATOR COUNCIL: And I noted in the material you made available to the committee, an article from the "American Legislative Exchange Council." [LB496]

ERNIE CHAMBERS: Yes. [LB496]

SENATOR COUNCIL: And in there, I think that's an organization that many of my colleagues are a member of. [LB496]

ERNIE CHAMBERS: Yes. And it's so conservative it squeaks when it walks. (Laughter) [LB496]

SENATOR COUNCIL: But am I correct in my understand that ALEC even concluded that there was no increased safety associated with red light cameras? [LB496]

ERNIE CHAMBERS: Right. And they even dealt with the studies on which those claims were based and in some of the instances there was no breaking out of the accidents caused as a result of red lights being run. They just talked about the number of collisions overall and how much it cost. In San Diego, that was one of the situations. Also, it was shown that if they would just increase the amount of time... [LB496]

SENATOR COUNCIL: On a yellow. [LB496]

ERNIE CHAMBERS: ...that the yellow light remains yellow, there would be a dramatic decrease in the number of these collisions. They found out in other instances, I don't know if they documented it there, these cameras are installed by companies and they get a cut out of every fine that is collected. They had been allowed to adjust... [LB496]

SENATOR COUNCIL: The yellow. [LB496]

ERNIE CHAMBERS: ...the traffic signals so that it in fact shortened the amount of time that the yellow light was there. So if a person came and was looking for it to be yellow for an ordinary amount of time, it would turn red and the person could not stop and would go through and be ticketed. They found out that these cameras are not put at the most dangerous intersections but at the ones where there is the most volume so that they would get the most tickets and get the most money. And those happened coincidentally in many instances to be where the amount of time that the yellow light remained yellow... [LB496]

SENATOR COUNCIL: Was the shortest. [LB496]

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ERNIE CHAMBERS: ...was the shortest. So it is a revenue generator. Senator Fulton, before he was talked to, admitted to the media that this was designed to raise some revenue, that Lincoln is cash-strapped, and this is the way to raise some money. Those who testified for this bill know that that's what it's for. The cities where they have it talk about how many millions of dollars it brings in and safety has not been appreciatively helped. But I promise, and I shouldn't have to do this all the time, that if bad legislation like this which is unconstitutional on its face is going to be enacted then I will assume my duty as a citizen and I'll file the lawsuit. And it will not be in federal court, it will be in the state court. And I will win. [LB496]

SENATOR COUNCIL: Thank you, Senator. [LB496]

SENATOR ASHFORD: Senator Rogert. And we're going to go to the next bill at 3:15. So... [LB496]

SENATOR ROBERT: And if I start to repeat myself, please cut me off. I'm sorry I came in late. [LB496]

SENATOR ASHFORD: No, not...go ahead with your question. I just wanted to let everybody know. [LB496]

ERNIE CHAMBERS: I'm not sorry you came in late. (Laugh) [LB496]

SENATOR ROBERT: Senator, have you ever been ticketed by one of these types of machines? [LB496]

ERNIE CHAMBERS: No, they're...none of these can be operational in Nebraska. [LB496]

SENATOR ROBERT: Right. In any other state have you been... [LB496]

ERNIE CHAMBERS: No, no. [LB496]

SENATOR ROBERT: Well, I have. (Laughter) [LB496]

SENATOR ASHFORD: Well, maybe we'll go to 3:20. Go on. (Laughter) [LB496]

SENATOR LATHROP: Except he's got to go on the witness stand. (Laughter) [LB496]

SENATOR ROBERT: I was in Phoenix, Arizona driving a friend's car at near dusk with sunglasses on. (Laughter) Apparently I ran the red light. As I went through it the flash went off and the guy riding with me went, you just got a ticket. And I said, I don't live

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here, this is not my car. So the friend who owned the car got the ticket in the mail with the picture of the guy driving not his car with sunglasses on. I could tell it was me. He could tell it was me. No way you could prove in court it was me. And I wasn't even in the state. They wanted to get it off their insurance in the state of Arizona. They wanted somebody to either pay it or for the driver to come down or the owner to come back to the state and prove that it wasn't them. I believe we paid it for the sake of not hassling with it. What do you say to that? [LB496]

ERNIE CHAMBERS: I think it's wrong because it puts...it turns American jurisprudence on its head. Under the law now, and this is a crime, there is the presumption of innocence. You don't have to say a word and you don't have to prove somebody else did an offense. You can remain silent and the state must, on its own, prove every element of an offense beyond a reasonable doubt. This turns it backwards and will say, well if you're not the driver but you're the owner, you have to not only prove you're innocent, but you have to implicate somebody else. In other words, do the state's work for it. It's one the most poorly drafted bills I have encountered. And were I in the Legislature it would not have been brought, it would not have been brought. [LB496]

SENATOR ROBERT: Well, I fully agree with you not only in terms of the language of the bill but in the concept of it itself. [LB496]

ERNIE CHAMBERS: Right. [LB496]

SENATOR ROBERT: So thank you very much. [LB496]

SENATOR ASHFORD: Okay. Thank you, Senator Chambers. [LB496]

ERNIE CHAMBERS: You're welcome. [LB496]

SENATOR ASHFORD: One more witness. [LB496]

SENATOR LATHROP: Always a pleasure. [LB496]

SENATOR ASHFORD: One more opponent and then we will...do we have any neutral testifiers here? Okay. Then we'll go to Senator Pirsch's bill next. [LB496]

AMY MILLER: (Exhibits 16 and 17) Good afternoon. My name is Amy Miller. I am the attorney for the ACLU and I also hope I am the attorney that Senator Chambers will call if he decides to challenge this. (Laughter) We have two constitutional concerns and a safety concern as well with this bill. The two constitutional concerns go hand in hand. The first is the privacy rights of the individuals. It's not clear how the pictures are to be taken. If it's a picture of the face of the driver, what happens with the information that is collected by the cameras? If the camera has managed to snap a photo of a city council

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member at 2 a.m. with someone other than their legal spouse and someone within the Police Department leaks that information or it ends up on a Web site, who's liable for that? If it takes a picture of the intersection as a whole and captures the picture of a brutal accident happening and that information gets leaked, who's responsible for that? You'll see in the footnote that we've cited to a lawsuit that New Jersey faced, several expensive lawsuits after, time after time, footage from fatal accidents were leaked and placed on private Web sites for people's entertainment, ghoulish, macabre entertainment at that. New Jersey had to pay out expensive settlements with the individuals because of their liability in leaking the information. If we only take a picture of the license plate in order to prevent privacy violations then you raise all of the due process concerns, the other constitutional issues at stake that have been discussed here previously. Normally, if I get a ticket, I know right then that I have just been pulled over and I can start thinking about whether I want to hire an attorney, whether or not I want to contact other individuals in the nearby area to call as a witness at my defense. It is just a traffic ticket, but it's a traffic ticket that people have a right to fight in court should they decide to do so. We've touched on the fact that there's a Seventh Circuit case out there. Senator Council very easily pointed out we are not in the Seventh Circuit. And you asked for an Eighth Circuit case, I've given you one on page 2. There is a case pending in the Eighth Circuit about red light traffic lights in Missouri. And in fact the federal judge refused to dismiss constitutional claims brought by the plaintiffs. So although he could have easily found that there was no constitutional issue as the Seventh Circuit did, that case is alive with those constitutional issues in our circuit. Finally, I want to talk about the safety issue. I've handed out a study called, "Red Light Running Cameras," issued by the Florida Public Health Review. You heard Mr. Conboy assert that there was no indication that these increased car accidents. In fact, this study holds the exact opposite. You'll see that in the very first line of the abstract it talks about comprehensive studies conclude cameras actually increase crashes and injuries providing a safety argument not to install them. The reason I discovered, being a lawyer not a safety engineer, is simple. Most of these accidents happened in an intersection where someone is running through the red light, without the red light camera, it's a T-bone crash. Someone hits me as they're attempting to legally proceed through the green light. Once you install the red light cameras people see the camera, realize I'm going to get a ticket, screech to a halt, and it becomes a rear collision accident, just as fatal, just as likely to result in personal injury damage. I'd also like to point out, Senator Council, you asked a question which I can't answer because my time has run out. [LB496]

SENATOR ASHFORD: Thank you, Amy. [LB496]

SENATOR COUNCIL: You can answer my question. [LB496]

AMY MILLER: Your question was about the Insurance Institute for Highway Safety, which was cited by Senator Fulton in his opening comments, pointed out in the study

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that I've given to you they openly admit they're wholly funded by the automobile insurance industry, which would not seem to be a group of people that would have any bad motives, except as you'll see quoted on pages 3 and 4, not only is the methodology problematic in the studies that they rely on as to safety, but quote, insurers may not set out to increase crashes and injuries, but increases in crashes and injuries indirectly contribute to the automobile insurance industry as a growth industry. Increases in crashes raise the risk rating of drivers in a community, which lead to disproportionately higher automobile insurance premiums and subsequently rising profits for insurers. So the studies that are being relied on are funded by people who will benefit as a result of the legislation. Truly neutral research that has been done says that not only are these a bad idea in terms of safety, they also are a bad idea for public policy and the constitutional rights of our citizens. [LB496]

SENATOR COUNCIL: Thank you, Ms. Miller. [LB496]

SENATOR ASHFORD: Thanks, Amy. [LB496]

AMY MILLER: Thank you. [LB496]

SENATOR LATHROP: Can I ask one quick question if I may, Mr. Chair? [LB496]

SENATOR ASHFORD: Sure. [LB496]

SENATOR LATHROP: And this is just brief. You said that there's an Eighth Circuit case pending on the constitutionality of this? [LB496]

AMY MILLER: Yes, the... [LB496]

SENATOR LATHROP: It's pending before there and not decided? [LB496]

AMY MILLER: Exactly. There was... [LB496]

SENATOR LATHROP: That's all. [LB496]

AMY MILLER: There was a motion to dismiss and the judge said no,... [LB496]

SENATOR LATHROP: Okay. [LB496]

AMY MILLER: ...the constitutional claims will proceed. [LB496]

SENATOR LATHROP: Okay. [LB496]

SENATOR ASHFORD: Senator Fulton is coming down the...and then we'll move to

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Senator Pirsch. [LB496]

SENATOR FULTON: Thank you, Mr. Chairman. Number one, for the record, I did not say this is to raise revenue. Had that been my intention, you would not be seeing this bill. Anyone who has followed my tenure recognizes I am not about raising revenue such that government can spend more money. Hopefully, if you learn anything about me, that is the case. I did say that this is about saving money, which is different than raising revenue. The...couple arguments, I'd like to point out that it was suggested that these would actually cause more accidents not less. I'd like you just to contemplate the logic behind that assertion. If the argument is made that people will change their driving habits because they're nervous or they feel more urgent or persuaded because there is a traffic light, then how is that any different than when a police officer is sitting at that intersection, same effect. So in order to decrease...if that logic holds true, then to decrease the number of accidents, we need to cease enforcing traffic law. That is preposterous. I would like to see that particular study from Florida. I have not seen that one, but I'd review it and comment. But at least I'd ask you to look at the logic behind that statement. Senator Chambers brought up a point of a lack of uniformity, saying that there should be uniformity because of the requirement for equal protection under the law. Similar to a previous bill I brought before you, this is kind of a theme that I have in some of my legislation. I propose that a traffic camera is dispassionate, nonjudgmental, objective, it's a computer. And it would seem to me that that would provide more uniformity and ensure equal protection under the law for all. The questions and answers handout that Mr. McQuinn gave to you, city attorney, earlier, number 7 and number 8 address the constitutionality questions that Senator Chambers brought up, maybe not exhaustively but at least takes a step to that. I'd point your attention to those two particular Q&A numbers. And lastly, bear in mind that this is a bill that is not mandatory in nature, it is permissive in nature, allowing municipalities to utilize this existing technology. With that I appreciate your time and consideration. [LB496]

SENATOR ASHFORD: (See also Exhibits 33 and 34) Thank you, Senator Fulton. That concludes the hearing. And we will now go to Senator Pirsch, LB671. Let me just get a sense of how many testifiers we have on LB671. One, two, three, four, five. Senator Pirsch. [LB496 LB671]

SENATOR PIRSCH: (Exhibits 18-21) Good afternoon, members of the Judiciary Committee. I am State Senator Pete Pirsch, representing the 4th Legislative District. My name is spelled P-e-t-e P-i-r-s-c-h. I'm also the sponsor of LB671. LB671, the purposes for the bill are as follows. In 2008, an interim study was conducted and that was LR276, was conducted to examine the standards and oversight of death investigations in Nebraska. There had been some concerns brought to light by victims' families, individuals who had deceased, the families of those individuals, and those concerns were highlighted among other media outlets in a series of articles in the Omaha World-Herald. So the study was put forward. The study included the following

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information. Present day autopsy rates in Nebraska, existing levels of coroner training, apparent quality of death investigations, existing state standards and oversights and other measurements. The whole underlying, I guess, review was to look at the existence of uniformity and the presence of a high quality in the standards of death investigations in Nebraska. And the findings of the study revealed certain needs of key stakeholders in Nebraska's death investigation processes. At this point in time, why don't I...if I can get one of the pages here. The findings were included in a report, this report, and led to the introduction of LB671, my bill. By the way, because of the lengthy and exhaustive nature of the report, you can see the number of pages involved here, we took the liberty not to actually print one out and kill trees with it. But a link to the report was sent to the counsel for the Judiciary Committee. And I invite you all to talk to Mr. Rainey about that link, if you have not already been provided that link. And at this point in time, I'd just like to thank my legislative aide, Tanya Hayes, who spent the summer, an exhausting amount of time delving into coordinating this report. It delved into all stakeholders and into the concerns that they had. And so I wanted to especially thank her for her exhaustive work in that area. LB671 provides our county coroners and law enforcement with the tools then necessary to better accomplish their death investigation duties, both in terms of helping to ensure a uniformity among the state, and a high quality to those death investigations. LB671 amends Section...a number of sections and modifies the membership of the currently existing Nebraska County Attorney Standards Advisory Council and charges them with the duty of ensuring statewide quality and uniform death investigation processes. LB671 as written in the green copy also granted the council the authority to do several things. I'm not going to get into specific detail on the green copy, the original bill as introduced as we are putting forward, I am putting forward an amendment here today to replace the bill. So you can effectively ignore the green copy. The amendment is the fruit or product of many stakeholders coming together to reach a consensus about the ideas that were put forward originally in the green copy, in LB671, to find a way that we can move forward united in the right direction to ensure that high quality and uniform death investigation processes are in place in the state. To the substance, when you look then at the amendment, which has been passed out by the page, you'll notice on page 2, beginning on line 10, one substantive aspect of this amendment is that it makes the Nebraska county...it slightly changes the composition of the Nebraska County Attorney Standards Advisory Council, makes it go from seven members to nine members. If you get a breakdown of that the number on the committee will go from four to five members who will be county attorneys. There will be...there was a requirement in the...for one professor of law to be included amongst the old paradigm, now that can be a professor of law or a professor of forensic science as well. It keeps two county commissioners or supervisors in the Advisory Council, and it adds one county sheriff or chief of police to the council. So that is one facet of what the bill does. Moving onto another aspect of this amendment, page 3, line 14, the council, this advisory council will now...can create uniform checklists of best practices to promote uniform and quality death investigations throughout the state. And that can include such things as autopsies, and then it lists in particular to give the

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council some particular guidance as to what type of scenarios they may want to envision. It includes sudden, unexplained infant death syndrome as well. And that is something that my office has been contacted among other contacts that that is an issue as well that people in Nebraska have a particular concern about. Page 3, line 27, another aspect of this amended bill is it may create...the council may create standardized procedures for death investigations and best practices. Another aspect, page 4, line 15, the council may help establish a voluntary network of regional officials, which can include law enforcement, coroners, medical personnel and others to provide support services for any location in Nebraska. We have a very diverse state. In some counties we have populations with just a few hundred people, in others, Douglas County for instance, where I'm from, we've got a great population and more, perhaps, resources as a result of that. But we have to make sure, because we represent the state, that no matter where you are, whether you're in the smallest hamlet or village or whether you're in the largest city in the state that Nebraskans can rest assured that if death occurs that that investigation that follows, and looking into whether or not something funny has happened, will be of uniform high quality. And so that is an important aspect of this bill as well as amended. Page 4, line 22, another aspect. There will be, and this is, I think, a very important step forward, mandatory training for coroners or deputy coroners. Let me just comment briefly. The paradigm for attorneys now, for coroners in the state of Nebraska was established in the year 1917. By the year 1920-some it was already being criticized. It puts essentially attorneys in charge of making some determinations in a way that would involve...could involve medical type of determinations. And so, you know, over the course of decades and decades there has been an acknowledgement among those in Nebraska that this is a shortfall insofar as these attorneys, and many of these are newly graduated who are part-time county attorneys, that there is no process in place to make sure that they even have the beginnings of the training necessary to do a...you know, begin to perform their job. And so this bill would, I think, importantly require mandatory training for coroners or deputy coroners, the attorneys who are functioning in that capacity within one year of their appointment. And it would allow for the council to establish annual training thereafter as they see fit. So these are among the more important facets of the amended...amendment rather. And I think that again, when you look at just the history of, you know, the attorneys, the county attorneys and deputy county attorneys acting as...in the coroner capacity in some areas of the state there is an acknowledgement that in not all cases uniformity has been in place. And so I think that this is an important way in which, and by the way embraced by the county attorneys, that we can move forward significantly in the right direction. And at this point in time I'll stop and just ask if there's any questions. [LB671]

SENATOR ASHFORD: Any questions of Senator Pirsch. Oh, Senator Council, I'm sorry. [LB671]

SENATOR COUNCIL: Yes. Senator Pirsch, in reviewing AM585, and you've referred to it, the concern I have and I think that the concern that may be expressed by some

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others probably in an opposing fashion or in a neutral fashion because there was quite a bit of excitement generated by the introduction of LB671. And I think it was due in large part to the fact that Section 3 of the original bill set forth specific duties that the council should have. Now according to the amendment, all of this is "may" have. So they may do it, they may not do it. You may have uniform procedures, you may not have uniform procedures. You may have a system of...a regional system of forensic pathologists, you may not. What do we gain by this legislation? I mean if everything that the council does is discretionary, then isn't it a fact that the practical effect of LB671 as amended is to change the composition of the council? [LB671]

SENATOR PIRSCH: Well, I thank you for that question. And the answer is no, actually not everything is discretionary, the changing of the council, the composition of the council to include greater expertise. But again, I mentioned and this is a very significant change, which is mandatory, it's not permissive, which would be and has been agreed to by the county attorneys, many of the county attorneys is my indication, is that for the first time we are going to have mandatory training. And I think that that is such an important facet of that. Here you could, according to Nebraska law right now graduate from law school not having any background in medicine or death investigations and, you know, if you are assigned a county attorney perhaps on a part-time basis, like I said in a county that only has a few hundred people, you really lack, in many cases, the resources to...and the gumption perhaps to obtain that training so that you can, when you come upon the scene of a death that you have at least the requisite background so that you can look for standard signs that would indicate whether or not, for instance, foul play was at hand. Really, it is...we are pushing upon lawyers, untrained lawyers the...without any training whatsoever certain quasi medical type of duties. And this would begin to address...and that's mandatory. So that would be within the first year of their serving in that capacity, not just coroners but deputy coroners, they would have to receive that training. So that's an important facet. Now the reason, and you...and of course, the Judiciary Committee, if they have any kind of feelings, be happy to work with them in whatever areas they want. But when it comes to making specific types of kind of commands from the Legislature, as was talked about on the legislative floor today, when that...I guess....there was the...and the amendment didn't pass because there was a thought that my amendment was micromanaging, delving into...there was a council created, they were given a task, a task to perform. The expertise would go on the council. And yet the feeling was, why would then I, from the Legislature not knowing all the relevant circumstances, not being able to spend day after day after day, week after week, year after year examining the issues, making relevant kind of weights of decisions. Why should we add a specific amendment, write it into law where we dictate to a council who is assembled for their expertise and tell them how to, you know, to carry out the details. And so I...in this we're assembling a group of experts and we are relying upon, and it's not just county attorneys but it's a broad group which is why we raised the number to nine, included forensic pathologist membership, chief of police or county sheriff, etcetera. And we are allowing these individuals who are in the trenches,

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fighting this war every day, who have the time to thoughtfully ponder and look for the best practices to make those determinations. So that's the reason why I've taken the approach here not to mandate based upon what my thoughts are here as a legislator, what the best way that they should perform but rather charge them with the duty of going forward in that area. [LB671]

SENATOR COUNCIL: Okay. But just two comments. [LB671]

SENATOR ASHFORD: And then we're going to move on because we... [LB671]

SENATOR COUNCIL: Yeah, and I don't want to belabor it. But first and foremost, LB671 is promoted as establishing a standard for medical examiners. And unlike our neighbor Iowa that has a medical examiner state system, LB671 was, as originally drafted, providing that system. And it was the council that was going to carry out that system which is markedly different from the Violence Prevention Commission, whose sole purpose was to entertain grants from community-based organizations. They weren't the ones who were going to be actually delivering the system. Here, even with regard to the training that you speak to, the bill says that it's training to be determined by the council, but the council itself has no mandate in terms of the standards, the guidelines because that's all been changed from a mandate to a discretion whether they even develop best practices. So what is the training going to be if the council doesn't even have a standard? And then the...changing the composition of the membership, I mean, we're talking about medical examination. And you're correct that the county attorneys aren't medical professionals. Yet the amendment...the original bill provided that you had at least had a certified forensic pathologist on the council. Now you don't even have that. It could be a professor of law and that professor could be a professor of contracts law or a professor of forensic science. There's no requirement under this bill to inject any medical expertise into this process. And to eliminate the establishment or the requirement that there be an establishment of a regional network of forensic pathologists, I think, I mean in my opinion makes the bill meaningless. You're basically back to the same system you're in now, except you're going to develop some system of some continuing education. But what the standard is against which that continuing education is to be measured, who knows. [LB671]

SENATOR ASHFORD: Okay. Thank you. What? Do you have a comment? [LB671]

SENATOR PIRSCH: Well, I just don't know if that was a statement or a question. (Laugh) So to the extent that it was a question, I'll be brief. I guess we just have a different kind of view. I think that the...I believe in this council that they will be looking at...approaching it from that issue and I believe devolving the greatest amount of latitude upon the council to make those choices rather than me as a legislator was best. I would just also ask that there was a letter that was sent by Janice and Leon Jessen, that that be read into the record, if I could have... [LB671]

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SENATOR ASHFORD: Thank you, Pete. And despite what happens on the bill, Tanya did a lot of work on this. And so we appreciate her work. These issues are tough. And spending all summer on them is...can be very tedious. (Laugh) So good work on that. Proponents, how many proponents do we have? Okay. Let's start here and go down the line. [LB671]

KEVIN WILLIS: Good afternoon. My name is Kevin Willis, W-i-l-l-i-s. I'm a detective with the Washington County Sheriff's Office. I'm here in support of LB671. I think it's important that law enforcement and forensic science is added to this advisory council. I think it's something that the state needs to look at in providing protocol for death investigation. And also a big part of this will be looking at funding. County attorneys aren't very well educated in death investigations, quite frankly, as law enforcement that does the death investigation for them. For instance, I also do coroner duties, so that falls on me and to work with the county attorney in that respect. It's...I think the big thing to look at this through the council, council getting together is to look at funding above really everything. There are people, these jurisdictions, they don't have a lot of education because of funding and things go by the wayside because of that. There needs to be a uniform standard for everyone and to give them the opportunity to be able to do those death investigations efficiently and effectively. I mean we're charged with standing in the gap for people that can't do that themselves. This council, hopefully, would help give them the tools and education necessary to do that. Thank you. [LB671]

SENATOR ASHFORD: Thank you, thank you for your comments. Any questions? Thank you for your testimony. Next proponent. [LB671]

SHAWN EATHERTON: Good afternoon. I'm Shawn Eatherton, the Buffalo County attorney, Eatherton, E-a-t-h-e-r-t-o-n. I'm representing the Nebraska County Attorneys Association in support of this bill. I guess I'm one of those, I think he said, uneducated attorneys. So that would actually be me. Prior to, I guess, I have a little bit of a different background and somewhat of a different interest. Both my undergraduate and graduate degrees were in biology and so I take a firm and strong look at all the forensic sciences as well as the science part of our job. I think we take the coroner position...I think we take it seriously. I know the last few years we've spent quite a bit of time at least trying to focus on it. And I think this bill sets this really...continues us in the right direction of really focusing our association and our prosecutors on being good coroners. As we...the other thing I think this bill really does it really looks at how we all have...we have different dynamics across the state. It encourages different organizations within government, whether county, city, county attorneys offices, to work together to come up with solutions and be better trained in acting as the coroner. Because frankly, the investigator was right. I am...I rely on my law enforcement to do the law enforcement part of this job. And in Kearney, I'll give you an example, in the last eight days I think I've had nine deaths, and that's a lot; in a jurisdiction of 45,000 that's a busy week, four

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of which we did autopsies on. The others were a balance of hospice deaths and those type of things. However, I have set standards in my county on when we do autopsies and when we don't. And those are the type of things if we could come up with some more standardization across the state I think it would be extremely beneficial. Additionally, in...and again, I know there are other organizations that operate in similar fashion, and they've been very effective. And I think Sheriff Lawson may testify here shortly. I know they have a similar situation in the western part of the state. We have a couple in Buffalo County and to encourage to do our job and to serve the people we have something called a FATE Team, which is the city and county working together, including my office, for training and making sure that we get a full investigation. And then finally, if it's something larger now we have something that's called SCALES which is actually multijurisdictional, numerous counties and numerous cities. So if we have something larger and we need to turn to each other and utilize our...the maximum amount of...to get the best we can of each other's experience, we certainly want to do so. So with that, we certainly support this bill. And I would entertain any questions with respect to the coroner duties and county attorneys. [LB671]

SENATOR ASHFORD: Thank you, Shawn. How's the new judge working out? [LB671]

SHAWN EATHERTON: You know it's working out very well. [LB671]

SENATOR ASHFORD: Is it helping the caseload? [LB671]

SHAWN EATHERTON: It's helping the caseload tremendously. And I think it's helpful in Grand Island too. Certainly it's helped out a lot and we appreciate it. [LB671]

SENATOR ASHFORD: All right. So it's both cities, right? [LB671]

SHAWN EATHERTON: Yes, correct. [LB671]

SENATOR ASHFORD: Thanks, Shawn. [LB671]

SHAWN EATHERTON: Thank you. [LB671]

SENATOR ASHFORD: Next proponent. Afternoon. [LB671]

PAUL SPENCE: Good afternoon. I'm Dr. Paul Spence, that's S-p-e-n-c-e. I am an instructor at the University of Nebraska Medical Center, but I'm a Board Certified forensic pathologist. I received my certification in forensic pathology at King County Medical Examiner's Officer, associated with the University of Washington. When I initially read this bill it was the green copy and I was pretty excited about the fact that there was going to be a regional system, certainly standards for death investigation, access to a forensic pathologist. I mean that's the meat of this bill really. And now I find

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that that's been stricken. I think that there is...in Washington what I did is I served as a forensic specialist and I traveled around the state of Washington to provide to the coroners my expertise and my services to those people who needed it. Now this did not affect other places. It wouldn't affect Seattle, it wouldn't affect Tacoma, it wouldn't affect Spokane. I just served those people that called me up and said, hey, I need your help, I need some advice or I need you to do an autopsy. You could arrange to have that in Nebraska where you wouldn't necessarily affect Douglas County, you wouldn't necessarily affect Scottsbluff because I understand there is some resistance to that. However, you would still provide for the state excellent forensic pathology and the ability for them to call myself or somebody else who's Board Certified when they need help. That's all I got. [LB671]

SENATOR ASHFORD: How many of you are there in the state, at your level? [LB671]

PAUL SPENCE: Oh. [LB671]

SENATOR ASHFORD: No, I know there's one of you, but how many like you? (Laugh) [LB671]

PAUL SPENCE: We have three. [LB671]

SENATOR ASHFORD: Three? [LB671]

PAUL SPENCE: Yeah. [LB671]

SENATOR ASHFORD: Thanks. It's good to see you. [LB671]

SENATOR LATHROP: Can I follow up on that? [LB671]

SENATOR ASHFORD: Yeah. [LB671]

SENATOR LATHROP: Where are you at now? At the university, did you say? [LB671]

PAUL SPENCE: Correct. [LB671]

SENATOR LATHROP: Okay. Can...let's say there's a terrible bloody scene in Greeley County, which is a small county. And they need somebody to come in to do a forensic autopsy on somebody. Can they just call you up and say, get on a plane and come up here or get in your car and come up here and do an autopsy? [LB671]

PAUL SPENCE: In Washington, yeah. I've got a license to practice in Nebraska, got a license in Washington. Yeah, I've traveled all over the place. [LB671]

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SENATOR LATHROP: But we could...can we do that currently? [LB671]

PAUL SPENCE: Can you do that currently? [LB671]

SENATOR LATHROP: The county attorney in a particular, let's just take a small sparsely populated county in the state of Nebraska. If they have a death or a problem right now can they call you and simply employ you? [LB671]

PAUL SPENCE: If they were so inclined. I think it's up to their discretion. They may have contracts with other people, but barring that it's up to their discretion. [LB671]

SENATOR LATHROP: Okay. That's what they can do right now. [LB671]

PAUL SPENCE: They could. There's no...nothing to prevent them from doing that. [LB671]

SENATOR LATHROP: Or they can...and they do this, not to get too far into the particulars, they frequently do bring bodies into Omaha for autopsies from outside of the area. Is that right? [LB671]

PAUL SPENCE: That's correct. [LB671]

SENATOR LATHROP: Is that an acceptable alternative? [LB671]

PAUL SPENCE: Yes, it is. [LB671]

SENATOR LATHROP: Okay. Thank you. [LB671]

SENATOR ASHFORD: Senator Council. [LB671]

SENATOR COUNCIL: Just quickly a follow-up on Senator Lathrop. And thank you, Dr. Spence, for coming and testifying because you've addressed some of the concerns I had between the bill as presented and the amendment. The contracts that you referred to that some of the counties have to perform autopsies, correct me if I'm wrong. More often than not those are just with MDs? [LB671]

PAUL SPENCE: They are contracts with pathologists. So they are trained in autopsy pathology. They don't have specialized forensic training. [LB671]

SENATOR COUNCIL: Forensic pathology, okay. [LB671]

PAUL SPENCE: They may even have specialized forensic training, but they're not, quote, Board Certified. [LB671]

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SENATOR COUNCIL: Okay. And in that regard your response to Senator Ashford is that there are three, to your knowledge, Board Certified forensic pathologists in the state of Nebraska? [LB671]

PAUL SPENCE: That's correct. [LB671]

SENATOR COUNCIL: Now you're familiar with the system in Washington State. [LB671]

PAUL SPENCE: Yes. [LB671]

SENATOR COUNCIL: Do they have like a statewide medical examiner system? [LB671]

PAUL SPENCE: No, they do not. They... [LB671]

SENATOR COUNCIL: Do they have a regional? [LB671]

PAUL SPENCE: They actually leave it up to the county's discretion as to how to proceed, based on population size. [LB671]

SENATOR COUNCIL: Okay. Are you familiar with the state of Iowa's medical examiner system? [LB671]

PAUL SPENCE: Yes, I am. [LB671]

SENATOR COUNCIL: And correct me if I'm wrong. They have a statewide medical examiner system, is that correct? [LB671]

PAUL SPENCE: That is correct. [LB671]

SENATOR COUNCIL: Okay. And in fact they have a state facility... [LB671]

PAUL SPENCE: Yes. [LB671]

SENATOR COUNCIL: ...that is utilized for those purposes for conducting the autopsies in the events that are kind of outlined in LB671, death under suspicious circumstance, death of someone under age 19, sudden infant death, those types of things. Is that correct? [LB671]

PAUL SPENCE: Correct. [LB671]

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SENATOR COUNCIL: Okay. And in terms of LB671 as it was originally introduced, correct me if I'm wrong, one of the things that you indicated that you were encouraged by was the fact that it provided that the council would establish these standards or best practices. [LB671]

PAUL SPENCE: The...what I was encouraged about was the fact that the council consisted of not only law enforcement, not only attorneys, but also someone like myself who has actually practiced... [LB671]

SENATOR COUNCIL: A Board Certified... [LB671]

PAUL SPENCE: ...you know, forensic pathology for years. And you would bring that together and decide how to best pursue death investigation. It also provided for a system or at least some system for counties that were underserved to have at hand a forensic specialist, a Board Certified forensic pathologist to help them with determining cause and manner of death, perform autopsies, assist with scene investigation, what have you. [LB671]

SENATOR COUNCIL: Okay, thank you. [LB671]

SENATOR ASHFORD: Thanks, Dr. Spence. That was very interesting testimony, to the point. That was very good. Any other proponents? Afternoon. [LB671]

KORY KIDD: (Exhibit 22) Good afternoon, Mr. Chairman, members of the committee. My name is Kory Kidd, K-o-r-y K-i-d-d, and I'm here to testify in support of LB671. On the afternoon of July 29, 2006, the mood was somber in the living room of Grace Elizabeth's grandparents. Her parents and grandparents were waiting on the lead investigator and county attorney to bring them autopsy results which they believed would disclose Grace Elizabeth's cause of death. When the county attorney investigator arrived, you could tell they were as uncomfortable as Grace's father and grandparents were. In subdued voices with downcast eyes they said, the preliminary cause of death was SIDS, but we still have some work to do. Little did anyone know at that moment Grace's mother, as she sat there wide-eyed, harbored a dark secret. Months go by as Grace Elizabeth's family waits for the final report. Little did they know that Nebraska had no formal procedures for the investigation of sudden infant deaths, no training for law enforcement personnel, no training for county attorneys who act as coroners. When Grace Elizabeth's family finally met with local law enforcement and their county attorney, they found themselves educating these officials on the conduct of sudden, unexplained infant death investigations. Because Nebraska has no standards, key evidence was not retained, key investigative standards were not known, therefore they were not followed. And the sad thing is these standards are readily available on the Internet. The Center for Disease Control has had sudden unexplained infant death procedures in place since at least 1996. Procedures, questions, and diagrams are there

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for downloading, ready for local officials to use. Each year 25 to 40 infants die in Nebraska suddenly whose cause of death is not readily determinable. Experts say between 10 and 20 percent of these types of death are actually intentionally caused by a caregiver. These deficiencies in Nebraska's sudden unexplained infant death investigations have been well documented by DHHS Child Death Review Team for years. Because the autopsy results of a SIDS death and a suffocation death are identical and Nebraska has no death investigation standards, people are literally getting away with murder here in Nebraska. As bad as the situation is for infant death investigations, it's even worse for other death investigations as recent articles in the Omaha World-Herald have shown. How death investigations are conducted vary widely from city to city, town to town, because you have local county attorneys with minimal, if any training, assigned coroner responsibilities. Many of you are attorneys. Sitting right here today in front of me, can you tell me you have adequate training to determine a victim's cause of death. This is the burden you are placing on your brethren. Victims' voices are there to be heard. But how in these days of cell phones and satellites can we expect to hear them when we still follow practices from the era of the telegraph and Morse code? I know that in economic times like this a bill like this is tough to support. But put yourself in the shoes of Grace's grandparents. What if this was your granddaughter? What if it was your mother who was the victim or your grandfather? It shouldn't matter whether you live in Omaha or Scottsbluff, each Nebraskan needs assurance that each victim's death is appropriately investigated regardless of where they live...to give the tools to local officials to hear each victim's voice. I know what I would do. I am Grace's father. Listen for Grace's voice. Thank you very much for your time. [LB671]

SENATOR ASHFORD: Thank you for your time. Thanks for coming. [LB671]

SENATOR COUNCIL: May I ask a quick question? [LB671]

SENATOR ASHFORD: Yes, Senator Council. [LB671]

SENATOR COUNCIL: Yeah. Thank you, Mr. Kidd, for coming. Have you read the amendment to LB671? [LB671]

KORY KIDD: I have not. [LB671]

SENATOR COUNCIL: Okay, because I'm particularly concerned that you've expressed a concern that Nebraska has no death investigation standards. The original bill that mandated that the council develop these best practices to be utilized in handling death investigations, as amended it says they may do that. Which appears to me gets back to the problem that you've addressed. [LB671]

KORY KIDD: Yes, exactly. [LB671]

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SENATOR COUNCIL: Would you agree? [LB671]

KORY KIDD: Yes, I strongly feel that on a local level there has to be considerably more training so that investigators, county attorneys, the people that are being left to make these decisions have the tools and the education to make them properly. [LB671]

SENATOR COUNCIL: Okay. As well as a set of consistent standards. [LB671]

KORY KIDD: Guidelines statewide, yes. [LB671]

SENATOR COUNCIL: Thank you. [LB671]

KORY KIDD: Thank you. [LB671]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Mr. Kidd. Thanks for coming. Any other proponents? Sheriff, it's good to see you again. [LB671]

JIM LAWSON: (Exhibit 23) You too. Ladies and gentlemen, my name is Jim Lawson, L-a-w-s-o-n. I'm the sheriff of Scotts Bluff County, project director of the Wayne Drug Task Force. I make reference to those series of articles in the Omaha World-Herald of February 2008, by Karen Spencer, and a comment that she made, in Nebraska the quality of death investigation depends on where you die. What a terrible thing to say. But what a terrible thing to hear if you're the county sheriff or the police chief or the State Patrol captain in that area. Statistics show in her article that nationally studies show that the presumed cause of death compared to autopsy findings was wrong up to 29 percent of the time. In Nebraska death investigation calls 73 percent of the time no autopsy is performed at all. Scotts Bluff County is a member of the...a charter member of the Western Nebraska Intelligence and Narcotics Group, a multiagency drug and violent crime task force operating in 11 counties in the Nebraska Panhandle. In the event of a major crime or homicide or suspicious death, a major crime scene team is assembled. I can call on the Box Butte County Sheriff's Office, the Chadron Police Department, the Gering Police Department, the Nebraska State Patrol, the Scottsbluff Police Department, my office, the city police department, and my county attorney. This puts a lot of trained and experienced people at my disposal doing lots of work. It utilizes a regional concept, which I certainly support. We are very fortunate to have two forensic pathologists in Scottsbluff, very fortunate. But we want to help all 93 counties, but this requires preplanning, it requires interagency cooperation, and it requires the knowing and the sharing of resources such as equipment, manpower and training. We operate under the authority of the deputy state sheriffs state Statute 84-106 or through an interlocal agreement. The organization or task force is done through the Byrne Drug Task Force's concept which is already in place. Why should we reinvent the wheel? Our training is done at the St. Louis School of Medicine, but it's costly, it's very costly.

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Tuition alone is now over \$800, but I think that is...it's expensive, but I think that it is necessary. Shawn Eatherton just spoke to you from Buffalo County, does continuing education credit training at two conferences a year here in Nebraska. I think we can build on that. As past president of the Nebraska Sheriffs Association, I think we can work with our County Attorneys Association to build on regional training or training at the Nebraska Law Enforcement Training Center. I've already spoken with Bill Muldoon, director of the Training Center about that. The guidelines we've already got in place; we have borrowed from the state of Iowa, why reinvent the wheel? In closing, I would say that the county coroner's system in Nebraska isn't old, it's archaic. But there's a lot of good pieces and parts that are in place, we just need to work together and refine them. If there's an analogy here to be made, I compare it to President Obama's recent stimulus package. Is it an answer to everything? Obviously not, but it's a place to start. Give the stimulus package a chance, give LB671 a chance as well. Thank you for your time. [LB671]

SENATOR ASHFORD: Sheriff, how you doing on your drug interdiction money? Last time I was out there and we talked you said you were having trouble getting access to funds to do the job that you do out there. [LB671]

JIM LAWSON: We are... [LB671]

SENATOR ASHFORD: Are you getting some more flow of some more money? [LB671]

JIM LAWSON: Just speaking with Senator...or U.S. Senator Nelson's Office, just this week. He was a big pusher on that, obviously. Just spoke with Nebraska Crime Commission folks yesterday. He was here at the Capitol this morning with two meetings just to see what kind of stimulus money is coming to Nebraska. He's heard different amounts, obviously. And he said as soon as he sees that electronic check be deposited here at the State Treasurer's Office, we will then know exactly what's coming to... [LB671]

SENATOR ASHFORD: But you've had to do quite a bit of...and you do good work with less money,... [LB671]

JIM LAWSON: Oh, yes. [LB671]

SENATOR ASHFORD: ...a lot less money over the last five, six years. [LB671]

JIM LAWSON: Yes. And again, I think that share...that regional sharing concept of the drug task force working, it's written into our grant, I'd like to make that point, we've written violent crime into our grant. So if there is a homicide in Chadron or Sidney, we put our guys in a car and have to drive 100 miles or 75 miles, so be it. It's probably going to be...I've got two counties on either side of me where there is a sheriff. [LB671]

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SENATOR ASHFORD: Right. [LB671]

JIM LAWSON: No secretary, no jail, no communications, no deputy sheriff, his horse is tied up out back, it's ready to go. But in those two counties we've had two bodies dumped and in one county south of me we had the largest marijuana manufacturing operation in the history of Nebraska. [LB671]

SENATOR ASHFORD: Yeah. No, it's amazing the work that you do. And thank you for your hospitality when I was out there. [LB671]

JIM LAWSON: Thank you, Senator. [LB671]

SENATOR ASHFORD: And I hope you get some more money because you need it. [LB671]

JIM LAWSON: Thank you, Senator. [LB671]

SENATOR ASHFORD: Thank you. Okay, any other questions of Sheriff Lawson? Seeing none, thanks. [LB671]

JIM LAWSON: Thank you all. [LB671]

SENATOR ASHFORD: Any other proponents? Do we have any opponents to this bill? Okay. Looking good. [LB671]

JEAN THOMSEN: Good afternoon. Doctor Jean Thomsen and I am a Douglas County coroners physician. And I am here to say that I am a proponent of the bill with the amendment. I think some of the comments that have been made and what's most important for everyone here to realize is that if the scene isn't investigated properly, it never makes it to me to help you out. I have trained in a couple different systems that had both medical examiner as well as coroner systems. It doesn't really matter if you call it a medical examiner or if you call it a coroner. What matters is that it works. What matters is that the first person who goes to that scene evaluates the scene in the proper manner, has the red flags that are raised and gets the assistance that they need. I don't truly feel strongly about calling it a medical examiner or coroner. I'm not sure that if you change the naming of it that that in and of itself would fix any problem. I think what's important is the person who is out there initially evaluating make a good evaluation; if that person isn't capable of making an evaluation that they get the help. In the metropolitan Omaha area they can call the Douglas County coroner at any time and get assistance. I think that's pretty well known in the surrounding area. I can't speak to the middle of Nebraska or western Nebraska as that's outside my area of expertise. But I think that that's really the meat of the matter and that's what needs to be considered.

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[LB671]

SENATOR ASHFORD: Thank you. Thanks for... [LB671]

SENATOR COUNCIL: Could you repeat her name. I didn't hear her name. [LB671]

JEAN THOMSEN: Jean Thomsen. [LB671]

SENATOR COUNCIL: Pardon? [LB671]

JEAN THOMSEN: Jean Thomsen. [LB671]

SENATOR ASHFORD: Thanks, Jean. Thank you for your comments. [LB671]

JEAN THOMSEN: Um-hum. [LB671]

SENATOR ASHFORD: Senator Pirsch, I think you're up. And then we will go to the...thank you all, those of you who have been waiting for LB430. We will be there presently. [LB671]

SENATOR PIRSCH: Members of the Judiciary Committee, just as a point of information to start off with. My understanding is that there are currently six certified forensic pathologists in the state of Nebraska and another who is finishing training with the intention of moving back to Omaha. Dr. Okoye in Lincoln, Drs. Simon Sorophmen (phonetic), Spence in Omaha, Drs. Schilke and Simmons in Scottsbluff, and then the other forensic pathologist who has indicated an intention to move back to Omaha. So that was a question, I think, somebody had asked. Just to get back onto the train of thought we had been discussing before, first of all, this was not...is not a criticism or an indictment of the county attorneys. They are going above and beyond. They are tasked, in many occasions, in impossible ways and doing their very best as a group to ensure what is a mighty challenge, not just function as county attorney, but also function in a separate capacity as a county coroner. Why are we...why do we have this system? Really, it was born out of necessity. We don't have, in a population of 1.7 million people, the necessary resources. We are not and cannot be California or New York. And so we have to come up with a system that actually works for Nebraska with Nebraska. And so I want to make clear I wasn't criticizing any county attorneys. It is a hard job no matter how dedicated you are to ensure uniformity in many areas. And so this isn't about assigning blame. I think the county attorneys have gone above and beyond. Here's what the problem is and what the problem isn't. It isn't that the county attorneys don't want to do the right thing, that they don't want to obey the best practices and make sure that each case is thoroughly investigated. That...if that was the case, then mandates would make sense. But clearly, I think, county attorneys are devoted to their job. They want to do the right thing. It's just that we don't have necessarily in all cases the resources, the

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ability, a unified source where they can increase their understanding about how to do the right thing. And so this is the first very substantial step, I would posit, in that direction. Now if the committee is thinking that there are other steps forward that could be taken as well, I'd be happy to talk with the committee about that and to work with the committee towards whatever they thought was improving the bill. But to say that there are no concrete steps, there are no steps forward is not correct. Here we are saying that there is mandatory training. And that's a very important component. Right now there is no training whatsoever that exists. So you graduate from law school as a lawyer without any medical background, you might be a part-time county attorney, find yourself making these decisions in the first weeks of your, you know, leaving law school. And so it is definitely to have this training in place a very important step forward. Having the committee...this council structured in a manner that brings in a greater variety of expertise, I think, is an important component of that. Again, the harm is not that county attorneys don't want to do the right thing. The problem is that we don't have a constant reliable source of...from which they can derive that information and help guide them in their quest to do that in all cases. So the council, this council has never been specifically tasked with providing this assistance. This bill would do that. That is an exciting first step forward. And I think that they will do...it will have substantive impact in what occurs as a result. So I think what it also envisions is we sitting here as a legislative body can say, yes, things are gone wrong, we have our suspicions about what we would do if we were there. But the best, I think, choices are going to be made by people who are actually in the trenches, who are familiar with the problems as they exist on that day and for years, you know, the history is important to know. The actual scenario can never be encompassed unless you know what are the financial requirements that you are dealing with, realistically what can happen. But if the committee is interested in looking at other paradigms, additional mandatory requirements, and thinking that they can make this bill even more helpful, I'd be more than happy to work with them in any capacity that they would like to. So with that statement, I would open up to questions. I guess the only point that I would like to make is some improvements, even if you don't believe it is...takes us 100 yards down the field to score a touchdown, it has been...we are...this is something that concerns have been addressed...made for a very long time. And you must agree that, with all the statements, that some action must be taken. This bill does take certain substantial steps towards the field. And I think it is wrong to argue that if you don't go 100 yards, in my estimation it's wrong to go 50 yards towards that. So with that, I'll open up to questions, if you have any. [LB671]

SENATOR ASHFORD: Well, I think we're going to go to the next bill. [LB671]

SENATOR PIRSCH: (See also Exhibit 35) Very good. [LB671]

SENATOR ASHFORD: But thanks, Senator Pirsch. And thanks, Tanya, for your work. Senator Christensen from Imperial, Nebraska. [LB430]

SENATOR CHRISTENSEN: (Exhibits 24, 25) Are you ready, Chairman? Thank you, Chairman Ashford, members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th legislative district, here today to introduce LB430. LB430 makes changes to the Nebraska Concealed Handgun Permit Act and specifies what power cities and villages have with respect to firearms. Section 1 of this bill would declare that cities and villages shall not have the power to regulate the ownership, possession, and transportation of firearms except as expressly provided by state law. Any current ordinances, permits, and regulations cities and villages regulating such firearms issues would be declared null and void. Currently, local firearm ordinances are not considered in all areas in Nebraska, creating a patchwork of laws and ordinances regarding the ownership, possession, and transportation of firearms. This patchwork creates confusion to what is lawful and unlawful as you travel across the state of Nebraska. LB430 addresses this concern that state policy regarding the basic regulation of firearms is clearly and uniformly applied across Nebraska. LB430 would not apply to local zoning issues such as the discharge of firearms within corporate limits or municipalities. That would continue to be a matter of local determination. Sections 3 through 6 of LB430 would amend the Concealed Handgun Act. First in Section 3 the requirement of Nebraska State Patrol to issue a concealed handgun permit within five days after a criminal background check would be changed to within 30 days from application of a permit. I had several people contact my office regarding their experience in obtaining a concealed handgun permit. Several of them spoke of their permit process taking six to eight weeks. I felt that it would be better to have a clear, specified time frame instead of a more open-ended process currently in the law. I have been in discussion with Nebraska State Patrol regarding this issue. I believe they have entered a letter in a neutral position, stating that 45 days would be a reasonable time frame to process applications. I am willing to work with the committee and the State Patrol to establish a clear time frame. Second, in Section 4, the bill would allow permanent stationed military personnel in Nebraska, who for voting and tax purposes are not considered residents of Nebraska to be considered residents for the purpose of the Concealed Handgun Act. Section 4 was taken directly from LB826 which was advanced to General File in 2008. Currently, Section 69-2433, in Concealed Handgun Act, requires an applicant to be a resident for at least 180 days to establish residency for the purpose of this act, but prohibits any applicant who maintains a residence in another state and claims the residence for voting and tax purposes to obtain a Nebraska concealed handgun permit. This current prohibition includes any military personnel who fit the category described in subsection 6 and thus, does not allow them to obtain a permit. Section 4 would allow the category of military personnel to be eligible for a concealed handgun permit. It is my desire to honor the men and women serving in our country in the United States armed forces in Nebraska by creating an environment where they feel welcome regardless of where they claim residence for voting and tax purposes. Third, in Section 5, LB430 would allow a place of worship to authorize its security personnel to carry concealed handguns on its property so long as each member of the security personnel complies with the Concealed Handgun Permit Act

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and possesses such permit. This authority is modeled after the current law that allows security personnel for a financial institution to carry concealed handguns under the requirements of the Nebraska Concealed Handgun Act. One of the following testifiers will address more specific information regarding church incidents. Finally, Section 6 would add a new section to the Concealed Handgun Permit Act, allowing for reciprocity, the recognition of concealed handgun permits and licenses from other states and the District of Columbia. This section would extend reciprocity if the individual was not a resident of Nebraska and the state or the District of Columbia has been determined by the Attorney General to have standards equal to or greater than the standards imposed by the act. The Attorney General would be required to maintain and publish a list of those states who meet those qualifications. With almost all states in the country permitting some form of concealed carry, it only makes sense that we provide reciprocity at some level. This specific language was modeled after Kansas law. I believe LB430 makes a step forward by addressing several important issues to make our firearms clear and our Concealed Handgun Permit Act more equitable and effective. I encourage the advance of LB430 to General File, and thank you for your consideration. [LB430]

SENATOR ASHFORD: Thank you, Mark. Any questions of Mark? Seeing none. Let me ask how many are here to speak in favor of this bill? How many are opposed? We're going to go to 5:30 in that, so we should be able to get everyone in. Why don't we start with the proponents? If, for some reason, we don't get everybody in, we will leave time for the opponents. There are only two opponents at this point. Are you in favor or an opponent? So there are three opponents, so we'll gauge the time that way. We'll hopefully get everybody in. Good afternoon. [LB430]

CODY BLOCKER: (Exhibit 26) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Cody Blocker, C-o-d-y B-l-o-c-k-e-r. I am director of security for Lincoln Berean Church, and I'm here to testify in favor of LB430. The portion of the bill that we're most concerned about at Lincoln Berean is on page 6, line 21, section 5, part C. Along with other improvements to the current concealed carry law, this bill allows a church or a place of worship to authorize its own security force to carry concealed weapons. Financial institutions already have this exemption under the current law, so why not places of worship also? A week ago yesterday, our church was robbed of over \$145,000 and although the provisions in this bill have little to do with our finance and armored car procedures, last week's incident shows that churches are a target for violent crime. And we had our second church shooting of this year of 2009, just three days ago last Sunday in Maryville, Illinois. Pastor Fred Winters was shot and killed by Terry Sedlacek right in front of his congregation as he was preaching that morning's message. We've seen an increase in these types of high profile church shootings over the years from two in 2006; three in 2007; and six shootings last year in 2008. We don't know how many more there will be in 2009, but we want to be prepared, and we want to take the best precautions available to us in order to ensure that our

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attendees are safe when they enter our campus. Churches and places of worship are a target for active shooters and other acts of crime. Churches are places of sanctuary where large numbers of people gather, and they're confined to a large indoor place with little or no security. The active shooter has figured this out. We in the security industry ask, "Why should churches be the most unsafe places in town?" The church should be the safest place to go and to congregate, and people of Nebraska should be able to go to church and feel protected and not have to worry about what kind of threat could walk through the door. Currently, our only option for concealed carry security is to hire off-duty law enforcement personnel, and although they provide an excellent service, and they're great to work with, it's a very expensive service and why should we have to do that when we already have an in-house trained security force that can carry concealed? Under the current law, churches in Nebraska are restricted from authorizing their own concealed carry armed security and precious budget dollars all over the state have to go to hiring outside off-duty officers instead of being allocated to other worthy areas of ministries like support groups and marriage counseling and compassion ministries. LB430 would change this. So me, our staff, our security team, our volunteers, the families of Lincoln, and churchgoers across Nebraska request and pray that you would vote in favor of this bill, and make churches and places of worship more safe in Nebraska. Thank you. Be happy to answer any questions. [LB430]

SENATOR ASHFORD: Thank you, Corey. Any questions? Yes. Cody, I'm sorry. [LB430]

SENATOR LATHROP: I do have a question. What church is this that you speak for? [LB430]

CODY BLOCKER: Lincoln Berean Church. [LB430]

SENATOR LATHROP: Lincoln what? [LB430]

CODY BLOCKER: Berean, B-e-r-e-a-n. [LB430]

SENATOR LATHROP: Okay. And is it a large congregation? [LB430]

CODY BLOCKER: We have...average about 3,500 total weekend attendance here in Lincoln. [LB430]

SENATOR LATHROP: Is that in one service? [LB430]

CODY BLOCKER: That's three different services. [LB430]

SENATOR LATHROP: Three services. So, over a thousand, so there's... [LB430]

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CODY BLOCKER: Yeah, our largest service is about 2,000. [LB430]

SENATOR LATHROP: And I'm not...I'm asking this question, because I don't know the answer. This is about concealed carry. [LB430]

CODY BLOCKER: That's correct. [LB430]

SENATOR LATHROP: Can somebody strap a gun to their hip without it being concealed and walk around the parking lot? [LB430]

CODY BLOCKER: Absolutely. [LB430]

SENATOR LATHROP: So this isn't about what's going to go on in the parking lot, but rather, having somebody on the altar or inside the sanctuary... [LB430]

CODY BLOCKER: That's correct, inside our building. [LB430]

SENATOR LATHROP: ...with a gun inside their pocket. [LB430]

CODY BLOCKER: That's correct. [LB430]

SENATOR LATHROP: And the idea is that if somebody walks in like the shooter did last week, somebody in the congregation who's been authorized is going to stand up and shoot him before he can shoot. [LB430]

CODY BLOCKER: If...yeah, the idea would be there would be trained people who would maybe identify that person and maybe take out that shooter before he would shoot more victims. [LB430]

SENATOR LATHROP: And the person that's going to do this has been trained to carry a concealed handgun, but he's not necessarily a law enforcement person. [LB430]

CODY BLOCKER: That's correct. [LB430]

SENATOR LATHROP: And he's going to discharge a firearm in a roomful of...with 1,200 people in it. [LB430]

CODY BLOCKER: Yeah, if he...if the circumstances are safe enough for him to shoot the shooter. The concealed carry training, as I understand it, there's other things that would go into... [LB430]

SENATOR LATHROP: I'm a little more comfortable having a law enforcement person do that... [LB430]

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CODY BLOCKER: Sure. [LB430]

SENATOR LATHROP: ...than somebody...and I know that there's training and maybe somebody will tell me all about it. But to shoot...to discharge a firearm at somebody in a building with a thousand people in it may take a little bit more of a...skill than it would be... [LB430]

CODY BLOCKER: It would take a very high level of training, absolutely. [LB430]

SENATOR LATHROP: Okay. [LB430]

CODY BLOCKER: And it would be up to the church to select those people who...they wouldn't let anybody on that security force but, yeah. [LB430]

SENATOR LATHROP: There's nothing about this that says that...it just says that they can choose somebody on the security personnel to carry a concealed handgun who would otherwise qualify under whatever the training requirements are to concealed carry. [LB430]

CODY BLOCKER: Yeah, and the training requirements would be another...in another part of the bill, I understand but... [LB430]

SENATOR LATHROP: Right, right. But it's...but whatever those are, it's certainly not the same as a sworn law enforcement officer, for example, an Omaha or Lincoln police officer. [LB430]

CODY BLOCKER: Sure, and the idea I think would just be that at least, at whatever the level of training that the people have that would at least be better than the shooter with the gun with nobody else to defend so. [LB430]

SENATOR LATHROP: And this is just your fear that someone is going to come in and shoot the minister and not about the money that they have sitting around? [LB430]

CODY BLOCKER: It would concern both. [LB430]

SENATOR LATHROP: I mean, I can see...I could see if you said, we count \$30,000 worth of cash every Sunday, and somebody's got to get that from the...you know, from the back room or from inside the church to the bank. [LB430]

CODY BLOCKER: Um-hum. [LB430]

SENATOR LATHROP: I understand that part, because then you're talking about not

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shooting a gun in front of 1,200 people, but anyway, I... [LB430]

CODY BLOCKER: Right. Yeah, it would be in the service or in...yeah, any aspect of church security. [LB430]

SENATOR LATHROP: Okay. All right, thanks. [LB430]

SENATOR ASHFORD: I just...and we have someone else, and I want to get through everybody. But the reason it would...to be concealed is because the parishioners would feel uncomfortable with an exposed weapon. Is...? [LB430]

CODY BLOCKER: Exactly, that it's a professional environment. There is a place for uniformed security, and we do employ, you know, a uniformed LPD officer on the campus, and that's different versus having one or two uniformed officers at every entrance and all that, so... [LB430]

SENATOR ASHFORD: And so you feel uncomfortable having a uniformed person in the... [LB430]

CODY BLOCKER: Yeah, we're just trying to help that balance between security and offending or scaring people away from church, yeah. [LB430]

SENATOR ASHFORD: I understand. Okay, thanks, Cody, thanks. Next proponent? [LB430]

PHILIP HOUSER: Thank you, Senator Ashford, members of the Judiciary Committee. My name is Philip Houser. I am from Papillion. I come before you as a proponent of LB430. I thank Senator Christensen for introducing it to the Judiciary in hopes of getting it before the Unicameral. I also come before you, hopefully, as a visible reminder that our constitutional rights are not only inalienable, but come from God Himself. They are secured through bodies such as these. You are part anyway of the government which is to protect our constitutional rights and to enhance those liberties that we enjoy in this country, not least of which is the Second Amendment and its guarantee of our right to bear arms. Rights are only as good as the ability of the populace...of the population to exercise freely the right that is guaranteed in the constitution. I live in Papillion and if I travel from Papillion to Omaha, driving north on Washington, I pass through La Vista. Papillion currently allows for concealed carry. Omaha allows for concealed carry; La Vista does not. Bellevue limits the right to carry concealed. This really ought not to be. Local governments not only should, but they must have the right to local ordinances that have to do with local issues...building codes, for example. Scottsbluff has not only the right but the obligation to put up zoning laws in their local area for buildings that may not be true for Papillion. Those buildings in Scottsbluff, it's proper to do that because they don't move from Scottsbluff to Papillion. That's a local zoning ordinance issue. They

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should have the right to say about that issue. State permits and state licenses should be the purview of the state to issue. When we begin to have a patchwork of laws, we tear at the community that the state is empowered to protect. Also, I would add that reciprocity is an important part of this legislation. Minnesota does not recognize Nebraska's permit because Nebraska refuses to recognize Minnesota's permit. By law, we cannot...we do not recognize any other permit issued by any of the other 47 states that issue permits. And many of those states have regulations higher than ours, at least as high, if not higher than ours. And so I ask you to pass this legislation along to the full Unicameral for consideration and, hopefully, to become law. Thank you very much. [LB430]

SENATOR ASHFORD: Thanks, Pastor. Any questions? Seeing none, thanks. Thanks for staying all afternoon. Yes, sir. [LB430]

JORDAN AUSTIN: (Exhibit 27) Good afternoon. Good afternoon, Mr. Chairman, members of the committee. My name is Jordan Austin, A-u-s-t-i-n, and I'm a registered lobbyist speaking on behalf of the National Rifle Association. I want to thank Senator Christensen for bringing forward LB430. This is a very important piece of legislation. It deals with four major topics he touched on, and I'll briefly highlight on those as well. The first section dealing with statewide preemption. We've talked about this before in this committee; it's not new to this committee, but some of you it is. It's also not new here in Nebraska. There are currently about five other provisions of state law that preempt local law. One of those, the Pesticide Act, I believe a lottery act; there's an obscenity clause and a housing act, I believe, that where state law preempts all local ordinances. There are 47 other states that also have statewide preemption of firearms laws. We have a right to carry bill that was also not included in that list of five sections I just mentioned that the Attorney General just viewed and agreed with our original position that it is also preempted. And the concealed carry statute preempts local ordinances from preventing these permitholders from carrying within city limits. The other section dealing with nonresident military. This section is an important addition. I think it's good. This has been touched on in Kansas as well. I worked with some legislators down there who have nonresident military stationed in their state, and the same problem occurred there. They worked with them; they did some legislation. It met with tremendous success. The difference I believe here is the 180-day requirement, but I guess since that's part of the regular concealed carry statute we can look at the time frame, but it seems the military would fall under the same requirements as nonmilitary. The next section dealing with places of worship. I feel this is a good addition to it also. The security would provide a sense of comfort as the other people giving testimony just referred to it, would allow them to either have security or also have parishioners who are licensed to carry concealed...to act as security during services. And I think that's an important addition, and provide them with a sense of security. The fourth section is the reciprocity. Currently, there are about nine states that recognize Nebraska's permit even though Nebraska doesn't recognize any currently. There are 36 "shall issue" states which are

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similar to Nebraska which means they shall issue a permit unlike some of the more restrictive may issue states. Kansas has very similar training requirements, and they recognize currently 22 states, so I have reason to believe there will be about 22 states with reciprocity agreements that would align with Nebraska. I think, all in all, these are very important provisions. It's a comprehensive bill, and sometimes some sections outweigh others, but I think collectively, this is a very good bill that...and all the sections are equal in their importance, and I would be happy to stand for any questions. [LB430]

SENATOR ASHFORD: Thanks, Jordan. Senator Lathrop. [LB430]

SENATOR LATHROP: I do have a question for you, Jordan. Right now, can law enforcement...there's concealed carry which is basically to help, or to permit nonlaw enforcement people to carry a concealed handgun. Right? [LB430]

JORDAN AUSTIN: Correct. [LB430]

SENATOR LATHROP: Can law enforcement, by virtue of the fact that they're sworn law enforcement officers carry a concealed handgun? Earlier, the chief of police was here. Can he carry a handgun without respect to the concealed carry statute? [LB430]

JORDAN AUSTIN: Are you talking about when he's off duty? [LB430]

SENATOR LATHROP: Any time. [LB430]

JORDAN AUSTIN: Any...I mean, usually they're required to carry a gun whenever they're on duty or off duty. [LB430]

SENATOR LATHROP: When they're on duty. Can they carry one...I'm asking you, because I don't know the answer to this, not to set a trap for you. [LB430]

JORDAN AUSTIN: Um-hum, okay. [LB430]

SENATOR LATHROP: Can they...can a police officer, for example, carry a handgun into a church? [LB430]

JORDAN AUSTIN: Yes, they can. I believe they are allowed to do that, sir. [LB430]

SENATOR LATHROP: Okay, okay. Thank you. [LB430]

SENATOR ASHFORD: Just...Jordan, on the reciprocity issue, you're not proposing that...maybe you are...but tell me if you are. If you have a state that doesn't have the training that we have, but they do have a concealed carry law, we're not suggesting that those states be allowed to... [LB430]

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JORDAN AUSTIN: Not at all. [LB430]

SENATOR ASHFORD: ...they would have to have the same...at least the same training requirement that Nebraska has. [LB430]

JORDAN AUSTIN: Exactly. I must have omitted that when I was speaking before. The reciprocity section only allows for states with equal to or greater training requirements. [LB430]

SENATOR ASHFORD: And who would...would somebody keep a list of that? Maybe Senator Christensen...Attorney General carries a list. Okay. [LB430]

JORDAN AUSTIN: Attorney General. Yeah, there's...I guess if you want...Kansas' Attorney General does the same process, and this language is similar to what they have in their statute, because our training requirements are very similar to theirs. Their Attorney General maintains and updates a page very frequently. It's very user-friendly, and it's...so people not from the state can very easily get the information they need to know what the laws are. [LB430]

SENATOR ASHFORD: And I think the issue...I mean, just for the record, I think the issue that was before us regarding concealed carry before had to do with transportation, I believe. It wasn't this proposal. It had to do with transportation of a firearm through an area, I believe, at least the... [LB430]

SENATOR MCGILL: Senator Ashford, I think we talked about making it into that. I'm not sure that's what the bill was, though. [LB430]

SENATOR ASHFORD: Okay. Well, anyway, that's not that key an issue, but I just...thanks, Jordan. [LB430]

JORDAN AUSTIN: Okay, thank you very much. [LB430]

SENATOR ASHFORD: Yes, Senator Council. [LB430]

SENATOR COUNCIL: I have one question. Yes, thank you, Mr. Austin, for appearing to testify. I don't know whether you were...I guess I'll ask...we had distributed to us a document entitled "Church Shootings," and it lists a variety of church shootings, the shooter, the victim, the weapon, the result. Are you familiar with this document? [LB430]

JORDAN AUSTIN: Yes, if it's that one...I have that, yes. [LB430]

SENATOR COUNCIL: Yes. Did you have anything to do with the preparation of this

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document? [LB430]

JORDAN AUSTIN: I did not. No. [LB430]

SENATOR COUNCIL: So, you wouldn't know whether any of these shooters had permits to carry the weapons that were involved in the shootings? [LB430]

JORDAN AUSTIN: I do not have that knowledge, no. I'm sorry. [LB430]

SENATOR COUNCIL: So it is possible that some of these individuals may have had permits to carry the weapons that they used in the church shootings. [LB430]

JORDAN AUSTIN: It is possible, but I would consider it unlikely. What we have when you have concealed carry permitholders, you have to go through an extensive background check and training requirements. It's costly; it's time consuming, and these people are very law-abiding citizens. They don't, by nature, intend to lose this right they've just invested money and time in by breaking the law. So traditionally, the people who would take the time to do this aren't going to be the people you're worried about as far as committing crimes or acts of violence such as this. They are the ones you can actually count on when something bad goes on that there's people out there who can help before the police get there. [LB430]

SENATOR COUNCIL: I appreciate your opinion, but you don't know that to be a fact, that none of these individuals had permits. [LB430]

JORDAN AUSTIN: No, I said that. I have no idea whether or not...I guess we could do some research on this, but a lot of times concealed carry record permits are not open to the public unless it's part of a specific investigation, and I believe at the time those records are only available to law enforcement. [LB430]

SENATOR COUNCIL: Thank you. [LB430]

JORDAN AUSTIN: And it varies from state to state also. [LB430]

SENATOR COUNCIL: All right, thank you. [LB430]

SENATOR ASHFORD: Thanks, Jordan. [LB430]

JORDAN AUSTIN: Sure. [LB430]

SENATOR ASHFORD: I think that's it. Thank you. Next proponent. [LB430]

CHRIS ZEEB: (Exhibit 28) Good afternoon, senators. My name is Chris Zeeb, C-h-r-i-s

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Z-e-e-b, here representing the Nebraska Firearms Owners Association. I am also a Nebraska State Patrol approved concealed carry instructor, so I conduct training sessions for these individuals getting these permits. I'll try to be real brief in covering my points here. You know, three years ago, we sat in this committee and listened to a couple of police chiefs doom and gloom what was going to happen when these permits were issued, and, quite honestly, none of that has come to fruition yet. I think there's been two or three incidents amongst 4,000 or 5,000 permitholders over a period of two years. I think we could easily find two or three bone-headed incidents by law enforcement officers during that time as well. And there's basically some administrative issues with this law and, you know, I'm not here, you know, we're not here to debate or do you support concealed carry or not. It is law in Nebraska, and there's just some things that need to be fixed with it. The biggest predicament which has already been mentioned, is some of these city ordinances that have been on the books for a long time, and, you know, a gentleman...a couple of people back there spoke. Here in Papillion, and you're a concealed carry permitholder, you're legal, but once you drive into La Vista, you're not. So if you simply take the firearm out of the holster and set it on the seat, now you're legal to drive through La Vista. And Ralston also has an ordinance against concealed carry. Then you get into Omaha, and it's permitted. So as you can see, it's kind of...really makes no sense for these cities to have this ordinance. Another issue is active-duty military members. I get a lot of calls from members of the military stationed at Offutt who want to take the training class and get the permit. I tell them, don't bother. If they're not a resident of Nebraska, they can't get the permit. So we can trust them to protect our country, but we can't trust them to carry a concealed handgun in the state. The time frame to issue a permit...that's been addressed. You know, the original Concealed Handgun Permit Act said it should be issued within five business days. Well, due to poor wording, it says five business days after the criminal history check. So if the criminal history check sits in somebody's in-box for seven weeks and then it's started, eight weeks later they get their permit. And finally, church shootings, bank robberies, these are all on the rise. It really makes no sense to have these places as off-limits to carry concealed, creating gun-free zones where criminals know they're safe and know they're not going to be resisted. Senator Lathrop, you mentioned you don't want somebody shooting in a room with a thousand people. I agree, but it's an absolute last resort...you have somebody in there shooting up the thousand people, what should you do? You know, and that's...somebody...hopefully, someone can react and stop the situation from being worse. Thank you for your time. I'll answer any questions if you have them. [LB430]

SENATOR ASHFORD: Just one quick one. You know, you're a concealed carry instructor, do you have...or are you required to shoot every year to have your instructor permit...? [LB430]

CHRIS ZEEB: I'm required to maintain a certification, yes. [LB430]

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SENATOR ASHFORD: Does that mean you're...do you go through training every year? You shoot every year or what does it mean? What do you have to do to maintain the...? [LB430]

CHRIS ZEEB: To maintain the certification? [LB430]

SENATOR ASHFORD: Yeah. [LB430]

CHRIS ZEEB: I have to instruct classes. [LB430]

SENATOR ASHFORD: Okay. But you have more training than somebody that would carry a concealed weapon permit. I mean, you have more skill, more training and... [LB430]

CHRIS ZEEB: Yes. [LB430]

SENATOR ASHFORD: And that...is that because of the training you did get prior to becoming a concealed carry instructor? [LB430]

CHRIS ZEEB: Well, possibly, and I should back up. You know, there's so many varying levels of experience. I have a lot more experience than a lot of law enforcement officers do, but there's also a lot of permitholders... [LB430]

SENATOR ASHFORD: Right. But I'm just saying... [LB430]

CHRIS ZEEB: ...who may have a lot more experience than me. [LB430]

SENATOR ASHFORD: Than you. I understand that, but...but there is a...I'm just trying to get at the level of expertise. If you are an instructor, you would have had training that...required training that maybe a permitholder would not be required to have. [LB430]

CHRIS ZEEB: Correct. I had to take the training...train to be an instructor as well as take the training...take the class that I have to teach. So. [LB430]

SENATOR ASHFORD: Okay. And...but does that include shooting on a regular basis? Do you have to keep that up, that permit there, that instructor...? [LB430]

CHRIS ZEEB: I'm not required to shoot for the instructor qualification, no. [LB430]

SENATOR ASHFORD: Okay, okay. All right. Yes, Senator Lathrop. [LB430]

SENATOR LATHROP: You teach the course, so before I can get a concealed carry

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weapon or a permit and carry a handgun in my jacket or wherever I'm going to carry it, you're one of the people that are certified to train. [LB430]

CHRIS ZEEB: That's correct. [LB430]

SENATOR LATHROP: Let me ask you a couple of questions. [LB430]

CHRIS ZEEB: Okay. [LB430]

SENATOR LATHROP: Does your training also provide information to your students on where they can carry a concealed weapon presently? [LB430]

CHRIS ZEEB: Yes, it does. [LB430]

SENATOR LATHROP: Okay. So, I mean, just as a matter of us trying to evaluate this legislation, people are told by guys like you where they can and can't go in the state of Nebraska with their concealed weapon. [LB430]

CHRIS ZEEB: To the best I can, and where the...yes, it's very easy to say you can't in a house of worship, or you can't in a bank, but when it comes to the cities and towns, there's no reliable source of all the ordinances on the books... [LB430]

SENATOR LATHROP: Let me ask you this. Are you telling them to the best of your ability that they can't go into Ralston and La Vista? [LB430]

CHRIS ZEEB: Yes, I am. [LB430]

SENATOR LATHROP: Okay. The other question I had was, you suggested that there are some people who are...have a concealed carry permit who are more proficient than law enforcement when it comes to shooting that gun. [LB430]

CHRIS ZEEB: That's true. Um-hum. [LB430]

SENATOR LATHROP: They may go out at, you know, both days on the weekends and some evenings and shoot their handgun which I fully appreciate and endorse. There are a lot of...there are some people that have a concealed handgun permit, though, that don't have the proficiency of law enforcement. Right? [LB430]

CHRIS ZEEB: True. Um-hum. [LB430]

SENATOR LATHROP: Is proficiency part of the test? So before I can get a handgun, do I have to demonstrate to somebody that I can shoot a target from here to...like law enforcement might? [LB430]

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CHRIS ZEEB: Yes, yes. There's actually a specified qualification course laid out by the State Patrol. It's very similar to what a law enforcement officer has to do to qualify by law with their firearm once a year. [LB430]

SENATOR LATHROP: It doesn't involve people moving if this is a stationary target with the circles around the guy's chest, and they have to shoot at that, something like that? [LB430]

CHRIS ZEEB: It's a stationary target, yes. [LB430]

SENATOR LATHROP: I'm just trying to educate myself on the subject. [LB430]

CHRIS ZEEB: And if I can, can I expand a little bit more on what is taught in the class? Or... [LB430]

SENATOR LATHROP: Well, if we do that, there was about 15 people that want to testify if I turned you loose with it. [LB430]

CHRIS ZEEB: I just want to say, it's not, you know, we don't just go there and teach people to shoot. We spend nine hours teaching them why that's the absolute last resort. [LB430]

SENATOR LATHROP: And you know what? I appreciate that, and I don't have a problem with the concealed carry, I really don't. I understand why we have it, and the fact that there have only been two problems with it demonstrates that it's not the thing that everybody was afraid of, so I appreciate that. I'm just trying to understand and maybe put into perspective the idea that somebody's going to carry a concealed...be permitted to carry a concealed weapon into a church full of people which I may have some hesitation. [LB430]

CHRIS ZEEB: Okay. [LB430]

SENATOR ASHFORD: And Senator Lautenbaugh has a question, but that was my concern is, if you are going to do the house of worship, if you're going to deal with that in statute, somehow, some way the...well, we got to make sure these people are proficient to shoot it. [LB430]

CHRIS ZEEB: One other thing I'd like to add. I just recently completed a training down in Salt Lake, and in the state of Utah, they're allowed...they permit teachers and staff in schools to carry firearms and so carry permitholders. And I asked the Utah Bureau of Criminal Investigation, how many incidents they've had with permitholders in schools? Zero. And there's a lot of... [LB430]

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SENATOR ASHFORD: And that's good, that's good. But...Senator Lautenbaugh. [LB430]

SENATOR LAUTENBAUGH: What is taught in the class anyway? (Laughter) [LB430]

CHRIS ZEEB: We start off with situational awareness... [LB430]

SENATOR ASHFORD: (Laugh) Quickly, quickly, quickly. [LB430]

CHRIS ZEEB: ...situational awareness, conflict avoidance, how to de-escalate situations, basic firearm safety. We cover all the city ordinances that we can find, all the state statutes pertaining to the ownership, possession, transportation of handguns as well as the use of force, laws and various degrees of assault. [LB430]

SENATOR LAUTENBAUGH: And I know that you were probably here when they asked the question earlier about whether or not anyone with a permit has been involved in any of these shootings. Looking backward, though, do people who have a prior history of being involved in shootings get these permits? [LB430]

CHRIS ZEEB: I don't know the answer to that. Typically, you know, if it was a permitholder that was involved in the shooting, typically, that comes out in the news media. They're charged with a violation of the Concealed Handgun Permit Act, so it's obvious to the public then that they were a permitholder at that point. [LB430]

SENATOR LAUTENBAUGH: But can you get the permit itself with a past criminality in your record? [LB430]

CHRIS ZEEB: No, no. There's very strict background checks to get the permit. Okay, other questions? [LB430]

SENATOR LAUTENBAUGH: Thank you. [LB430]

SENATOR ASHFORD: Thanks, Senator Lautenbaugh. Thank you, very informative... [LB430]

CHRIS ZEEB: Thank you. [LB430]

SENATOR ASHFORD: ...testimony. Next proponent. You're next. [LB430]

RODGER WITTMANN: Okay. Well, I'll be the fastest one probably of all. I have a concealed carry permit...I'm sorry, my name is Rodger Wittmann, and it's R-o-d-g-e-r W-i-t-t-m-a-n-n, but I have a concealed carry permit, and I just have this queasy feeling

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when I drive across the state, because I keep hearing about more and more small towns, different places that have now enacted their own laws, you know, not permitting concealed carry. And I mean, I just found out I was...I went down the Interstate and drove up through Seward, and I found out afterwards that, you know, and it didn't matter, I had a gun with me. But I found out afterwards, Seward now has a law that, you know, you can't carry concealed when you drive through Seward. So, I mean, it didn't cause me a problem, but it just...I don't want to do anything that would cause me to lose this concealed carry permit. So that just makes me nervous, and that's why I would like to have, you know, that part of that bill passed. I also just...I also go to Colorado and Minnesota, you know, Colorado to visit family and also in Minnesota, and both of those two places, I believe, are two states that would have a reciprocal agreement with Nebraska, because they have pretty stringent requirements for their concealed carry. So I'd like...that would be nice to have that part of it. And also, just, you know, for...I'm a friend...I go to Lincoln Berean Church and I'm a friend of Cody's, and I just wanted to say, Cody has a really, you know, well-trained security team, and there are some police officers who do carry...I mean, they're always the first choice, you know, whenever they're there in the service that they can carry concealed. And most of them agree to do that and do that. So Cody is extremely cautious. You don't want to have someone, you know, stand up in a room of 1,500 people and start shooting. But if there was a shooter on the stage, you know, just picking off people, you know, in the audience, and anyone who tried to rush him, you know, would be his primary targets. It'd be nice to have someone whether it's a policeman who's just in plain clothes and carrying or someone else that is trained and authorized by the church, you know, that would be able to respond to it. So anyway, that's probably it for me. [LB430]

SENATOR ASHFORD: Thank you, Mr. Wittmann. [LB430]

RODGER WITTMANN: Thanks. [LB430]

GARY WILLIAMS: Good afternoon, ladies and gentlemen. My name is Gary Williams, W-i-l-l-i-a-m-s. I'm here to support LB430 as well. I'm a captain in the United States Navy, on active duty. I'm stationed in Omaha right now. In my 26 years of service in the Navy, I have moved 12 times. Some of those moves have been as short as nine months. Due to the number of moves that we make, the military has afforded us the right to establish a single state of residence, which mine has been established in Florida. Obviously, you can understand, moving as much as we do, it'd be cost-prohibitive and burdensome to change our legal residence every time we moved, so they afford us that right. So now in the state of Nebraska, I'm not considered a resident for the purpose of a concealed permit, so I can't afford my family the protection that a normal citizen of Nebraska would. So it's a little bit unfortunate, but I am asking that you look favorably upon LB430, and afford a military member stationed in Nebraska, the same rights that you would afford a civilian living in the state of Nebraska. Another issue that is a little strange for hunting purposes, hunting license,

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after 30 days the state of Nebraska does recognize me as a resident for getting an instate hunting license, but it doesn't for concealed permit. So if you have any questions, I told you I'd be succinct. [LB430]

SENATOR ASHFORD: Now... [LB430]

SENATOR LATHROP: Is it your understanding right now that if you are stationed at Offutt and you're from...and you maintain your residency in Florida, that you can't get a concealed permit now? [LB430]

GARY WILLIAMS: That is the way it's written, yes. Yes, sir. [LB430]

SENATOR LATHROP: That doesn't make sense. [LB430]

GARY WILLIAMS: I do have a concealed permit in Florida and Virginia from all the states I've been in if they...even if they...reciprocity...you know what I mean? [LB430]

SENATOR LATHROP: Reciprocity. [LB430]

GARY WILLIAMS: I will still get one in Nebraska even though they may recognize Virginia and Florida, I think it's best that you get one in the state you're in, so that you're most up-to-date on the current laws and regulations and so forth. [LB430]

SENATOR LATHROP: So you can get one in Nebraska based on reciprocity, but not based on the fact that you're here. [LB430]

GARY WILLIAMS: No, sir. Right now Nebraska doesn't recognize reciprocity, but if this gets passed, it might. It may recognize Virginia or Florida, I don't know. [LB430]

SENATOR LATHROP: Okay, I got it. Thank you for your testimony. [LB430]

SENATOR ASHFORD: That just seems like a no-brainer to me. Obviously something we need to do. Okay, thanks. [LB430]

GARY WILLIAMS: Yes. [LB430]

ROBERT THORNE: Good afternoon. Thank you for taking the time to hear my words. I'm Lieutenant Colonel Robert Thorne. I'm also assigned at Offutt Air Force Base as a member of the United States Air Force, and echoing what Captain Williams had to say, after 24 years of service and ten moves around the country, some of them as short as six months, it's obviously not feasible for us to change our residency every time we move. But it extends beyond that. It's...with the reciprocity specifically that this bill addresses. Military members, by nature of their assignments, are disbursed from their

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family members. I have to travel through many states to go visit my family. On many occasions, my family travels here to visit me. And every time we cross a state line, should we lose our right or our ability to exercise self defense? And, obviously, I don't think so or I wouldn't be here supporting this bill. Regarding the time frame to establish the residency, Captain Williams talked about the 30 days for getting a hunting permit, I'd just like to point out, and I don't know if we can change it in this bill. But I'd like to point out that the military service departments publish official military orders to assign individuals to a particular duty station on a particular day. It may be appropriate to provide a copy of those official military orders along with the application for a permit to prove residency effective the date that the Department of the Air Force or the Department of the Navy has assigned you to that location instead of mandating a six-month delay or wait while you can pin it potentially...have your life put in danger. I don't feel that we should have to put our rights to self-defense on the back burner for an administrative wait basically. But on behalf of my fellow service members, I really appreciate your time, and I hope you'll consider this bill and move it forward. [LB430]

SENATOR ASHFORD: Where are you from originally? [LB430]

ROBERT THORNE: I'm from Michigan originally. My wife is from Minnesota, so we travel to those two states on a regular basis. I travel to other states to visit friends and other family members. I do have, as the captain mentioned, I do have a concealed carry permit in the state of Michigan, but it's obviously not recognized here. [LB430]

SENATOR ASHFORD: Okay. Thank you for your comments. [LB430]

ROBERT THORNE: Thank you. [LB430]

SENATOR ASHFORD: Next proponent. Good to see you. [LB430]

BUD CALLAHAN: Good afternoon, Senator Ashford and fellow senators. I am here representing...Bud Callahan, C-a-l-l-a-h-a-n. I'm here representing just myself as an interested party. First, kudos to Senator Christensen, Janssen for a good bill that will eliminate the fragmented unconstitutional patchwork of rules surrounding where CCW permitholders may carry. And as far as Seward is concerned, somebody made that comment, I think the last time I was in Seward, their sign has come down. There are those that whether they carry or not, often try to avoid those places, because there is a feeling of lack of security. For many of us, we feel it is a welcome mat for those people that would do ill to others, because they know that there will be no legitimate carry person there. And I feel that the security and safety is better served and supplemented by education and awareness than suppression and denial. And that's the task of the committee. It's unfortunate, however, that you are expected to make a decision with just kind of one-sided information or you haven't been afforded the opportunity to go through a CCW course. And, Senator, I think that if you were to call, like the gentleman that

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testified just a little bit ago, that you would certainly have a welcome audience there with him or Mark Bohaty is another very, very competent, qualified instructor, and that they'd be glad to share with you those things and yes, you are certainly requested and required to shoot to a certain level. And, as I said, I would predict that no one opposing this bill has attended a CCW course, and I challenge them to attend one and become better informed and educated about CCW. And, of course, we all know what Jon Bruning, our Attorney General thinks of it, and as he said, we've had a CCW here in Nebraska for over two years now, and Armageddon has not yet happened. So with that, I would encourage that you go ahead and let this pass on, and a little sidelight as far as law enforcement is concerned, and first of all, I can assure you that it would not be a gun battle at the church certainly. And recently, and recently within the last couple of years there was a shooting in New York City which involved three New York police officers. There were 100 rounds fired; they hit 17 percent, 17 out of 100 rounds hit their target at a distance of 20 feet. [LB430]

SENATOR ASHFORD: Thanks, Bud. Thank you. Any other questions of Bud? Thank you. Next proponent. [LB430]

KURT LEFFLER: My name is Kurt Leffler, L-e-f-f-l-e-r. I'll keep my comments brief. I would like to specifically address Section 1 of the proposed legislation, and that is concerning preemption. Political subdivisions, of course, can change laws much more frequently than can this body. Now we've heard testimony previously that when a person is afforded CCW training that they're told where they can carry the firearm and where they can't. Well, this is not exactly accurate, and the reason it's not accurate is because a political subdivision can meet on a Tuesday night or a Wednesday night or a Thursday night, and they can decide to change the law very quickly. Okay. So from a practical standpoint, there is no way as an attorney for me to advise my clients as to where they can carry a concealed weapon and where they can't. So if someone was to call me and say, where can I carry? Well, the first thing I'd have to do is do a quick perusal of every city ordinance in the state of Nebraska so I will know where my client can carry and where they cannot. And so, that poses, obviously, a serious problem for my clients, and I would like to dovetail on just a couple other comments. Not to get into photocop, but you made a really excellent comment, sir. You talked about missing the sign on photocop. Now, some of these signs are very, very big. Well, if you miss the photocop sign, I think it was a \$100 fine that you had to pay. Well, if you're traveling into a small municipality that just put up a sign, and you miss it, you're now a felon. It's not a \$100 fine; that's a felony. Now, that's a high price to pay for missing a photocop sign. If I'm not mistaken, Nebraska writes statutes that clearly state that if a person is carrying a...they're not licensed for carrying a firearm then that's a felony. So anyway,... [LB430]

SENATOR ASHFORD: I'm not sure you're right, but that's...you're posing an interesting point, but I don't know if that's correct, but we'll look at it (laugh). [LB430]

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KURT LEFFLER: Okay, well, even if I would...yeah. Okay, let's assume for the sake of argument that Nebraska Revised Statute Section 28 doesn't make a person a felon for carrying a concealed weapon, but they've certainly committed a misdemeanor. [LB430]

SENATOR ASHFORD: Well, they could violate a local ordinance. [LB430]

KURT LEFFLER: So, in conclusion, the laws can change very dramatically and very quickly. And so I would propose that in a situation that this is important, what we would want to have is uniformity throughout the state of Nebraska so I would encourage the proposed language in Section 1. Thank you. [LB430]

SENATOR ASHFORD: Thanks, Mr. Leffler. Appreciate your comments. Next proponent. [LB430]

CHARLES LINK: Good afternoon, senators. Very quickly, I have a rather dual residency... [LB430]

SENATOR ASHFORD: Time out. You got to give us your...oh, you're going to give us your name. Okay. [LB430]

CHARLES LINK: My name is Charles Link, L-i-n-k, and I have a home in southwest Omaha. I work in Lincoln. During the week I maintain an apartment in Lincoln. In driving from Omaha to Lincoln, I pass through Gretna, Ashland, Greenwood, Waverly, and then hit Lincoln. I usually come down Highway 6. The laws between Omaha and Lincoln are somewhat different. When I buy a gun in Omaha, register it with the Omaha Police Division, I do not know for sure whether that would qualify me to store those weapons in Lincoln. Lincoln's laws are written with the idea that the guns were purchased in Lincoln by a resident of Lincoln. I vote, register my cars, pay taxes in Omaha. I work in Lincoln, actually on the south edge of town, live on 13th and South in an apartment, so this is why Section 1 means a lot to me. I would like to get better clarification so I knew there was some uniformity between where I could buy and store my guns. [LB430]

SENATOR ASHFORD: Thanks, Mr. Link. [LB430]

CHARLES LINK: Thank you. [LB430]

DOYLE HULME: Thank you, senators, for the hearing. My name is Doyle, D-o-y-l-e Hulme, H-u-l-m-e. I live in northwest Lincoln, but I have a farm in western Hall County. And when I go to the farm, I usually carry my handgun with me which is why I took concealed carry training, because if I have my gun in the case in the back end of the Suburban, without that it's illegal. Having gone through Seward many times because I live in northwest Lincoln, I see the sign. It says I'm illegal in terms of carrying that pistol in the back of the car. So I called the Seward chief, and he said, well, we're not going to

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bother you if you've got it in the back end in a case. But it's still illegal. As it is in Beatrice; as it was in Kearney; as it is in Hastings, so you go from place to place. So my appeal is to try to get some continuity statewide. Secondly is reciprocity with the other states. Thank you very much for your attention. [LB430]

SENATOR ASHFORD: Thank you. Yes. How many more proponent testifiers do we have? Well, we're going to get finished then. A couple more. Okay. [LB430]

KELVIN JONES: Chairman Ashford, members of the committee, thank you for this opportunity. My name is Kelvin Jones. First name is K-e-l-v-i-n, last name J-o-n-e-s. I serve Nebraska Christian College as a professor of theology. I am also an active member of Calvary Christian Church in Bellevue, Nebraska. I am interested especially in Section 5 that Senator Christensen has revised to allow houses of worship to make their own decisions concerning the security service that they have and whether concealed carry permitholders might serve as part of the security service for a house of worship. It is interesting that...or I think it's good to know that of the 48 states that now have some provision for concealed carry, 42 of those do allow the houses of worship within the state to make their own decision. One of the primary arguments in support of that position is that houses of worship are constitutionally free to make similar decisions for themselves. Near the close of his television interview following the Berean Church robbery, Chief Casady made the comment that I think is especially insightful that churches are, in fact, soft targets. There is far less danger of concealed carry permitholders allowing a doctrinal dispute in a Bible study to devolve into an armed confrontation than there is that a deranged gunman will decide that he will end his life along with the lives of others in a way that would gain the greatest possible notoriety. This seems to have been a primary motive for the Von Maur shooter, and it means that gun-free zones are actually the target of choice for such individuals. I think allowing concealed carry permitholders to serve as part of the understood deterrent of the security services of a house of worship would be very helpful, because the deranged individual, unless he also is determined to die and does not care at whose hand he does so--his own, a police officer's, or a citizen's, will realize that if there are members of the congregation who are able to respond with even lethal force to his intent to kill as many people as possible, he's less likely to choose that place as a target. I also, in response to an earlier question, can assure you that even without the concealed carry permit training, I recognize that my ability with a handgun would preclude as irrational attempting to shoot across 60 or 70 yards of a crowded congregational worship area. However, at a range of 20 feet, having a clear shot, I would be confident that I could stop someone from killing many, many others. Even in the Von Maur shooting at which the police response was very, very commendable...if I remember correctly, less than six minutes. The shooting did not end when the police officers arrived. It ended when the shooter took his own life. According to one eyewitness report, until that time, he was smiling as he shot, and reloaded and shot again. This is the threat that we face. We might want to think that houses of worship are places of such sanctuary that they would

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be respected by all. The reality increasingly is that that is not the case, and so I ask that you support the passage of this bill so that those of us who gather with our families to worship and to study the word of God would be able to do so without fear that we are making ourselves special targets of a deranged gunman. And I'd be happy to answer any questions. [LB430]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, thanks. Next proponent. [LB430]

MICHAEL HOUSER: (Exhibits 29, 30) Senator Ashford, members of the Judiciary Committee, my name is Michael Houser, and I hope in the next very short minute or two, I'll attempt to give you some brevity and some clarity into what I think that this proposed legislation means. My name is Michael Houser, M-i-c-h-a-e-l H-o-u-s-e-r from Fremont, Nebraska. I am a concealed carry holder. I am also a victim as well as my family of violent crime, but I'm not here to talk about that. What I'd like to talk about is for brevity...I put together an example of what I pulled from the Nebraska State Patrol on page 2. It's the frequently-asked questions from the Concealed Handgun Permits, and in the very long first paragraph in the middle, I underlined a section that says, "Unlike the concealed handgun permit law, there are no specific limitations on the places where a concealed weapon can be carried under this provision" which is the old concealed weapons legislation. The new existing concealed weapons statute which is the bottom paragraph, "statute applies to those who do not have a concealed handgun permit." I'm sorry, that's the old statute. You now need a permit to carry a handgun in the state of Nebraska, concealed, if you have a reasonable means to believe that. People who qualify under the concealed handgun permit go through a very rigorous training. This is one of the books, and I want to bring up some examples that came up today out of this book. It says, "The statute also applies to those holding a concealed handgun permit if the weapon carried is not a handgun." So if I have a concealed weapon permit, in cities that we don't know, and I'll make an example of this, that I don't know if they have concealed weapons code, I could be violating that code by carrying a handgun. If I felt it was reasonable for me to protect myself, I could carry a billy club; I could carry a Taser; I could carry brass knuckles; I could carry all kind...lead pipe, under the Affirmative Defense Action. So the problem with that is if I'm driving from Fremont where I live to Omaha, recently I found out from another piece of literature that I pulled from the State Patrol today, that Elkhorn is a city that has a concealed handgun code prohibiting that. Well, as I'm driving from Fremont to Omaha, if I get stopped because I carry a concealed weapons permit, I'm obligated by law and by affirmation when I get that permit to tell that officer, I have a concealed weapon. I can be found in violation of that city's code, and then I would lose my concealed weapon permit. So as we were talking today, I took some copious notes in that in this book, which was early spring of 2008, La Vista is not listed in here as one of the cities that has a concealed handgun. Ralston is not listed. Elkhorn is not listed here, but it is listed in the sheet that I pulled this morning, and the other two cities that I just mentioned are not in there either, so it's very

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confusing to get this information pulled together. And then the other thing...point that I wanted to make is that... [LB430]

SENATOR ASHFORD: Mr. Houser, I'm going to ask you to make it fairly quickly. [LB430]

MICHAEL HOUSER: Very quickly. I don't think it's just about concealed weapons. There are other city statutes and codes that have to do with the length of a firearm being 16 inches or 18 inches. How do you case a gun? How can you transport a gun? All those are very confusing and very difficult to navigate, so I'd appreciate your support for this. [LB430]

SENATOR ASHFORD: Thank you, Mr. Houser. Senator Lathrop. [LB430]

SENATOR LATHROP: One question. Did you just tell me or tell us that you looked on a State Patrol Web site to find out? [LB430]

MICHAEL HOUSER: Yes. [LB430]

SENATOR LATHROP: And so if you go to the State Patrol Web site, you can find out whether you can drive through Elkhorn carrying a concealed handgun... [LB430]

MICHAEL HOUSER: It says on the State Patrol Web site as of this morning which was updated, I believe, on February 4th, but it doesn't have some of these other cities that there's no consistency. If you look at the State Patrol's Web site, they use multiple sources, actually going to the city's Web site. Some of them use National Legal Research so... [LB430]

SENATOR LATHROP: Okay. But the State Patrol does maintain a Web site. [LB430]

MICHAEL HOUSER: They do, but I am not sure how they compile that information. But just from today, I found inaccuracies in that information. [LB430]

SENATOR LATHROP: Thank you. I'll have to look at that. [LB430]

SENATOR ASHFORD: Thank you, Mr. Houser. We have time for one more person. Here he is. Okay. [LB430]

JUSTIN HOBSCHIEDT: My name is Justin Hobscheidt, H-o-b-s-c-h-e-i-d-t. I'll be very, very quick. First of all, addressing the State Patrol Web site, that is actually inaccurate. Nebraska City is not on there, has never been on there, and I've actually spoken in front of the Nebraska City Board, trying to change that ordinance, and it's still illegal to carry in Nebraska City. But if you go to the State Patrol Web site which most people go to,

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that city is not on there. I didn't know that until someone else told me. I had carried there, I didn't know. Had I been pulled over, I would have had to notify and I was in violation, no way knowing, just driving down the highway, because it was not on the state Web site. Second of all, just to address Mr. Lathrop's point about being a very scary situation with someone that's not a law enforcement officer, shooting in a room of 1,000 people. I just want you guys to imagine that situation that would have already taken place for that to occur. An active shooter has already started shooting in that room. I mean, that's the most scary situation that could possibly be already. So to have one person that's at least a good guy trying to stop it, I don't think makes that any more scary. I don't see what could be worse than the only person in that room shooting being the one bad guy in the room. Training...we get real hung up on the training part as far as law enforcement, and there will probably be law enforcement people speak after me that their training is much more involved, and, obviously, it is. We're not going to police academy...I don't even know what that all entails, but I guarantee you, there's a lot more training in that than what I got in my concealed carry course. But we're talking apples to oranges. Police need to train to go in...they're going to go into situations in their career. I'm probably never going to have to use my handgun. When they're going into a situation, they're going into something that is already started; they don't have to be there. They're going into it. They don't know who's the good guy, who's the bad guy. They have to...this is part of what their training is. If I ever have to use my gun which I probably never will, it'll be very obvious who the bad guy is, and the only reason I'm going to do it is because I have no other choice. My wife and my kids are with me, and I guarantee you, if you're in the third pew in front of me, you may be wishing I might be using my handgun then to stop that guy. But quite honestly, if I can take out the back door, hey, see you later; you had your chance to arm yourself. I'm taking my wife and my kids out. I don't care about you. So, you know, that's a whole different thing. That's about all I can say, I guess. [LB430]

SENATOR LATHROP: That's not part of the training. [LB430]

JUSTIN HOBSCHIEDT: (Laughter) (inaudible) No. [LB430]

SENATOR ASHFORD: Thank you all. Let's move to the opponents. Do we have any neutral people here or just opponents? Marty. [LB430]

MARTY CONBOY: Good afternoon again, Chairman... [LB430]

SENATOR ASHFORD: Same tie as earlier. [LB430]

MARTY CONBOY: It's the only one I own (laughter). The city of Omaha has a large number of ordinances that are granted under the power granted under the charter 14-102 which does give the city of Omaha right now the power to control concealed weapons and to punish and prevent the carrying of concealed weapons and the

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discharge of firearms, etcetera, so this is, at least in part, directly in conflict with the existing charter power. And that would need to be addressed in some fashion. That is the only section that is of concern to the city of Omaha, that right now it's so broadly worded in Section 1, that it basically says that, you know, the cities have no power to regulate the ownership, possession, or transportation of firearms and that such ordinances are declared to be null and void. I would submit that that's a very large number of ordinances in the city of Omaha which include the transportation of long guns or rifles, possession by...or transportation by minors, the providing of guns to minors, the pawning of guns, who can purchase them in certain circumstances, the carrying of the guns in parks. There are a number of regulations that deal with the ownership, possession, or transportation of firearms. We have two ordinances; one that makes it illegal to carry a gun without a city ordinance permit, and to just carry it around even in the open. And there's another that requires all handguns be registered. All those would be voided by this legislation as well. I would submit...I can understand the problem with the carrying of concealed weapons which is permitted by the state being prohibited in certain jurisdictions. Omaha has exempted our ordinances, so that the carrying of concealed weapons with a state permit is not a violation of the city of Omaha. Perhaps some legislation to make that part of the process throughout the state would be reasonable, so you don't have this hodgepodge of laws that might affect a permitted owner. With that being said, this goes so far that it would just void all those ordinances which for over a century actually have been in effect successfully in the city. Most large cities in this country have charter power to control the carrying of weapons, because in urban areas, violence is different in terms of its condensed nature and the nature of shooting. So I would urge you to consider Section 1 as being against what the city of Omaha would prefer. It has been a policy of the city for a long time, and I'm here on behalf of the city to bring that up. [LB430]

SENATOR ASHFORD: Thanks, Marty. It's your sense that you could construct language that would not abolish those other charter ordinances. [LB430]

MARTY CONBOY: It's clear that the concern here is that a person driving across the state, although I would say there is no city of Elkhorn anymore. But let's say it was Valley (laugh)... [LB430]

SENATOR ASHFORD: Yeah. Well, I noticed you reacted, to some extent, to that. [LB430]

MARTY CONBOY: It's kind of a sore subject with some people, but the neighborhood of Elkhorn... [LB430]

SENATOR ASHFORD: Well, at least to those in Elkhorn, I... [LB430]

MARTY CONBOY: It is...I would say that it would not be improper to suggest that in

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those cities, the state has already found that those people are capable and trained to carry concealed weapons. I don't think it's the intent of those ordinances to say that we don't want that to happen. I just don't think the ordinances address that, perhaps under state law to make it clearer that they couldn't be prosecuted for such a violation if they've got that permit. [LB430]

SENATOR ASHFORD: Right. I see that point. Anything else? Thanks, Marty. Chief. [LB430]

TOM CASADY: (Exhibit 31) Thank you. Tom Casady, police chief of Lincoln, ditto with Omaha. We... [LB430]

SENATOR ASHFORD: Thank you, Chief. [LB430]

TOM CASADY: ...we have (laughter) Any questions? We have a few other places where you can't carry firearms. We don't regulate concealed weapons at all like Omaha, but we do prohibit the carrying of firearms in parks and furnishing firearms to minors and carrying firearms in city and county facilities, and into domestic violence shelters and substance abuse treatment facilities. So that's Lincoln's. As far as this argument about a patchwork of laws, I just don't think it's anything new that laws vary from state to state and city to city. There are things that are illegal in Nevada that are legal in Nebraska, and a few that are the other way between those two states. And city to city, we have lots of laws that vary; scores of examples so that part of living in a city or state or even visiting it is being familiar with what the local laws are. Can you park your boat trailer on the street? Is it okay to burn your leaves? What kind of fireworks are permissible, and is it okay to have a pit bull, and if you have one, do you have to keep it behind a fence? These different ordinances are adopted because of different concerns and different problems that cities face. And one of the problems we try to deal with in Lincoln is gun violence and the misuse of guns. I think our record on gun violence is pretty darned good here in Lincoln compared to any other city this size in the United States, and one of the tools we use is our own local ordinance that prohibits the possession of guns by people that have been convicted of certain kinds of misdemeanors. It was passed in 2003. It's more restrictive than a state law which only prohibits felons, people convicted of felonies from possessing guns. You know, rolling back an odometer is a felony; stalking is a misdemeanor; violating a protection order is a misdemeanor; impersonating a peace officer is a misdemeanor. And those are the kinds of violations that if you're convicted here in Lincoln, it's unlawful for you to possess a gun. It doesn't have anything to do with whether it's concealed or not; it's just unlawful to possess it. So we've added several serious misdemeanors. It's a misdemeanor violation of municipal ordinance to possess a gun if you've been convicted of one of those offenses. You can be fined \$100. You can go to jail for up to six months like any other misdemeanor in the city ordinance. And we've cited 76 people in the past four years for this. I want to tell you about one of them. I hope you listen to this pretty carefully if you're a proponent of this

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bill in the audience. It's a 30-year-old man that we cited for possessing a firearm illegal in Lincoln. He's a registered sex offender, level 3, high risk. He's been convicted of 27 crimes following arrests by the Lincoln Police Department. Those include attempted sexual assault of a child, violating the Sex Offender Registry Act, assaulting his pregnant girlfriend--the mother of his children, his wife--that's three separate assaults, same person, twice for child abuse, three times for possession of marijuana. And we took his shotgun away that he was carrying between the front seat of his car and gave him a ticket for violating our municipal ordinance. I think any reasonable person would agree that he shouldn't possess a firearm in our state, but he does, and it's legal under state law. This is all about local control to me, and if LB430 passes, our ability to effectively keep guns away from this criminal and others like him will be eliminated. [LB430]

SENATOR ASHFORD: Thanks, Chief. Yes, Senator Lautenbaugh. [LB430]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Thanks for coming today, Chief. Wouldn't you concede that maybe the right to bear arms is sort of different in our tradition than the right to burn leaves? [LB430]

TOM CASADY: I most certainly would. [LB430]

SENATOR LAUTENBAUGH: And that maybe if that's one of our fundamental rights, we do have a right to expect a little more continuity nationwide on that or even statewide...? [LB430]

TOM CASADY: And, you know, I want to have...like Mr. Conboy, I wouldn't have any problem if we were talking about concealed carry here. I agree with that. I think that the rule should be pretty uniform on that around the state. And it is in Lincoln. The problem I've got is...is with the absolute preemption of any kind of local control here. [LB430]

SENATOR ASHFORD: And I...just to follow up, those that are...most of the proponents or all of them that have testified, I think are law-abiding citizens. They're just concerned about not being law-abiding by driving to Seward. I think that's (laugh)...I mean, I think that's kind of what they're saying. [LB430]

TOM CASADY: Well, you know, I have to admit that if you've been convicted of violating a protection order, stalking... [LB430]

SENATOR ASHFORD: Well, I mean driving to Seward is... [LB430]

TOM CASADY: ...and you come to Lincoln with your gun, you're now violating the law here that you wouldn't be violating in Seward. [LB430]

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SENATOR ASHFORD: I understand, I understand. But I think that...I see your point. I just...I do think that these testifiers are not those cases. I mean, I think they're...these are people that just don't want to violate some other statute. Yes. Or ordinance. [LB430]

SENATOR COUNCIL: Chief, you indicated that Lincoln has an ordinance that prohibits the carrying of a weapon in a city park. [LB430]

TOM CASADY: Yeah, city parks...the ones I can think of are city parks, county and city facilities so like the county-city building and the courthouse, and also domestic violence shelters and substance abuse treatment centers. [LB430]

SENATOR COUNCIL: Okay. Now the current law does not include city parks as an area that's restricted from carrying a concealed weapon. [LB430]

TOM CASADY: No, but Lincoln's ordinance doesn't prohibit concealed weapons there. It prohibits firearms there. [LB430]

SENATOR COUNCIL: Okay. But that's the...that's the point I'm trying to get to. Okay? Lincoln's ordinance prohibits carrying a firearm in a city park. [LB430]

TOM CASADY: Yeah. Right, just like Omaha's. [LB430]

SENATOR COUNCIL: Okay. Now under the current statute, the current state law, it doesn't exempt state...a city park. [LB430]

TOM CASADY: I'll take your word for that, but as law is now in Nebraska, cities can regulate firearms possession and the carrying of firearms independently of the state. So the city can have a stricter ordinance than the state. [LB430]

SENATOR COUNCIL: Okay. But that's my understanding that the issue here is if Lincoln says you can't carry a concealed weapon and state law says you can carry a concealed weapon, if that weapon is concealed in a city park in Lincoln, you would be in violation of the state...I mean Lincoln's ordinance... [LB430]

TOM CASADY: Yes. [LB430]

SENATOR COUNCIL: ...would be preempted by state law, right? I mean, under the bill that's being advanced. [LB430]

TOM CASADY: Yes, under the bill as it's presented. That's exactly what would happen. Our ordinances would be negated. [LB430]

SENATOR COUNCIL: Yeah. And your ordinance doesn't...it doesn't matter whether the

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weapon...the firearm is concealed or not. You can't carry it in a city park. [LB430]

TOM CASADY: Correct. [LB430]

SENATOR COUNCIL: Okay. [LB430]

SENATOR ASHFORD: And all...but you're also saying, I think, unless I misinterpreted, that if you had an ordinance that said, you cannot carry a concealed weapon in Lincoln, and a state law that says, you can carry a concealed weapon in the state of Nebraska, those would be in conflict, and the Lincoln ordinance would not control...or do you think it would? [LB430]

TOM CASADY: Well, I think it would because I think...I'm not positive, Senator, to tell the truth... [LB430]

SENATOR ASHFORD: Okay. I...I...I...maybe...I thought that's what Marty was talking about. [LB430]

TOM CASADY: But I do know right now we can regulate firearms independently of the state, and we do have a law that is different than the state law. [LB430]

SENATOR ASHFORD: And we need to think about how that all works together but... [LB430]

SENATOR LATHROP: Maybe...can I ask just one question? [LB430]

SENATOR ASHFORD: Yeah. [LB430]

SENATOR LATHROP: And maybe to clarify, and this is a clarification of your testimony and Mr. Conboy's if I can. Out in Greater Nebraska, it's not uncommon to see people carry a rifle in their gun rack because they might have an opportunity to shoot at something that they can shoot at. [LB430]

TOM CASADY: Right. [LB430]

SENATOR LATHROP: And want to. And...but we have ordinances in Lincoln and Omaha that require a gun like that to be in a gun case. [LB430]

TOM CASADY: We do in Lincoln. [LB430]

SENATOR LATHROP: You can carry...you can have your shotgun in the...on the gun rack? [LB430]

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TOM CASADY: Yeah, you have a state law, Senator, that prohibits the carrying of a loaded shotgun in a motor vehicle. [LB430]

SENATOR LATHROP: Right. I'm just talking about my... [LB430]

TOM CASADY: But there's no city ordinance. [LB430]

SENATOR LATHROP: I think they do in Omaha. Marty's shaking his head yes. My point is, whatever changes we make to this, you want to make sure that we don't make a change that then takes away a local city's ability to regulate anything in the area of guns. [LB430]

TOM CASADY: That is what I'm concerned about, because if that were the case then this guy that we took this shotgun away, that's carrying it between the seats of his van, keeps it. [LB430]

SENATOR ASHFORD: Right. [LB430]

TOM CASADY: And I don't want him to have it even though the state has been unwilling to add things like stalking, impersonating a peace officer, assaulting your wife three times, violating a protection order, child abuse... [LB430]

SENATOR LATHROP: I think we might be doing that right now (laugh). LB63,... [LB430]

SENATOR ASHFORD: Well, there's just so...yeah, there's just so many days in each legislative session (laughter), we've got a lot of crimes to deal with. [LB430]

TOM CASADY: I've been testifying on it for 20 years. I really have. [LB430]

SENATOR ASHFORD: Okay, well, (laugh). I've only been here for 11 so...(laugh). [LB430]

TOM CASADY: I've brought copies of that testimony so. [LB430]

SENATOR ASHFORD: All right, thanks. Thanks, Chief. [LB430]

TOM CASADY: Okay. Thank you. [LB430]

SENATOR ASHFORD: And I wasn't obviously arguing with you. You're right on those very points, but. Yeah. Lynn. [LB430]

LYNN REX: Senator Ashford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities, and we do oppose

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this measure, and we oppose it for several reasons. First and foremost, Section 1 which takes away...is a very broad sweep of taking away authority that municipalities now have to regulate any type of firearms essentially. In addition, and I realize that many of you were not here at the time, but I know Senator Christensen and I have had this discussion. The concealed carry bill in this state would have never passed, but for the local option. And if you go back and read the legislative history and the transcript, that becomes very apparent. In fact, Senator DiAnna Schimek called me the day after the AG's Opinion was released which we do not...I respect the Attorney General's Office and him, but I...we do not agree with his opinion and nor do the city attorneys for those cities that already have a ban on concealed carry. So this local option does exist, and I realize that this is a story of that was then, and this is now. But we do want to fight to preserve that option. And as the testifiers before me in opposition to this bill have already noted, the sweep of this is just incredibly broad in Section 1, and, in addition, if you go on to page 6 of this bill which is 69-2441(1)(a), page 6, lines 12 to 14, that language they're only deleting "into or onto any," but if you look at it, "other place or premises where handguns are prohibited by law or rule or regulation." Well, in essence, what they're doing is by not taking that language out, they're really using Section 1 to do that. It's a de facto way of taking that out, because that really is the essence of local option. And I can assure you again that there were senators from Lincoln and Omaha and other cities in this state that asked the questions back and forth for the proponents of that measure on concealed carry as to whether or not a local option existed, and the answer was yes. That option does exist, and we want to preserve that. [LB430]

SENATOR ASHFORD: Lynn, I understand that, but in...and I understand that that is the history of that, but... [LB430]

LYNN REX: Yes. [LB430]

SENATOR ASHFORD: ...why pass the law if we're going to make...if we're going to make people law violators by driving from city to city? I mean, that just doesn't make any sense. [LB430]

LYNN REX: Well, I don't think, Senator, that, indeed, that you're in a situation where that is the...that that has to be the case. I mean, I think if the State Patrol... [LB430]

SENATOR ASHFORD: Well, if you drive from Ralston to La Vista to...then you're a law violator. Then you aren't. Then you are. Then you aren't. I mean, that's kind of silly. [LB430]

LYNN REX: But, Senator, there are ways in which that issue can be addressed in terms of the transportation of a vehicle when you're crossing the state...there are ways in which to address that. And I know that Senator Christensen wanted to discuss that. [LB430]

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SENATOR ASHFORD: Fair enough... [LB430]

LYNN REX: We're happy to negotiate that issue. There are ways to address that, because I do understand that when you're going from city to city and you're traveling, that's a different situation. [LB430]

SENATOR ASHFORD: Well, you don't want to make law violators out of law-abiding citizens just for the heck of it, you know. [LB430]

LYNN REX: No, absolutely not. But there are ways to do that and still preserve a local option. [LB430]

SENATOR ASHFORD: Thank you, Lynn. Thank you. [LB430]

LYNN REX: Thank you very much. [LB430]

SENATOR ASHFORD: Any other opponents, neutral? Senator Christensen. [LB430]

SENATOR CHRISTENSEN: I want to thank everybody for their taking the time and the testimony we've had. Like to mention Tom, Mark, I'll be glad to sit down and visit with them, and just look over the language that they proposed. I know one of the key issues I looked at in using firearm in Section 1 was like Bellevue; 10 p.m. to 7 a.m. on firearms. No one can leave and go hunting legally. If you're going to be out there to go deer hunting, you want to be there before sun up, you just can't do it. There's so many inconsistencies and that's the reason that I took this approach that is very broad. And there's, you know, I think there's been some good reasons given on both sides, and maybe we can sit down and visit here. But I think this has got a lot of good legislation in here that needs to go forward and I look forward to working with the committee on it. [LB430]

SENATOR ASHFORD: Thank you, Senator Christensen. Any final words? We're one minute away from 5:30. Good job, everybody and (laughter) thanks for the excellent testimony. That concludes the hearing and concludes everything for the day. (See also Exhibits 36-41) [LB430]

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Disposition of Bills:

LB15 - Held in committee.
LB97 - Placed on General File with amendments.
LB430 - Placed on General File with amendments.
LB496 - Held in committee.
LB671 - Placed on General File with amendments.

Chairperson

Committee Clerk