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Judiciary Committee  
March 26, 2009

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[LB510 LB518 LB595 LB659]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 26, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB595, LB510, LB659, and LB518. Senators present: Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Brad Ashford, Chairperson.

SENATOR MCGILL: Welcome to the Judiciary Committee here today. We're going to...we have a relatively short, I think, hearing ahead of us. I'm Senator Amanda McGill. I'm going to get things kicked off while we're waiting for Senator Lathrop to come back, who will be leading most of the hearing. With us today we have Senator Kent Rogert here to my far right. Next to my left, wonderful Senator Brenda Council.

SENATOR COUNCIL: Oh, thank you.

SENATOR MCGILL: Senator Lautenbaugh is here and so is Senator Coash from here in Lincoln with me. Christina Case is our committee clerk and actually LaMont just wandered off, so he'll be back as our counsel for this afternoon. We'll go ahead and start with LB595 and Senator Karpisek. [LB595]

SENATOR KARPISEK: Thank you, Senator McGill, members of the Judiciary Committee. I plan to be brief today. LB595...it's just..sorry, it's just all my stuff, LB595 is a bill to try to make what the coroners test for in a fatality accident and, to be honest with you, when I was researching this, I had a very hard time finding what they really do test for right now. The other part of the bill, as I read it in line 10 and in the amended version, says that, let's see, coroner shall examine the body and cause such test to be made as necessary to determine the amount of alcohol or drugs in the body. Change that to "and" drugs. And then for the purposes of this section, drugs means controlled substances enumerated in Section 28-405, which is actually the Schedule I drugs. Right now, the only person that I could find that could tell me much about what they test for now was Don Kleine, the Douglas County Attorney. He said that they screen for blood alcohol content and also for nine drugs or families of drugs, which are amphetamines, PCP, meth, cannabis, Darvon, barbiturates, cocaine, Valium, and opiates. So I guess the whole reason for bringing this bill is sometimes I hear on TV that there is a fatality accident and they often report there was no...alcohol was not a factor. I guess my thinking is, well, maybe alcohol wasn't a factor but were some sort of illegal or even legal drugs overtaken a factor? I do not have any sort of penalty in this bill but I thought for the family that would be involved in one of these fatalities should have a way to go after or sue the responsible party. So that is my reasoning for this bill. Again, I said this is my idea. We had a very hard time researching it. I don't know that other counties do different things. I assume they do. Again, we had a very hard time finding out what really happens in these cases. So with that, I would take any questions. [LB595]

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SENATOR MCGILL: Are there any questions for Senator Karpisek? Senator Coash. [LB595]

SENATOR COASH: Thank you, Senator McGill. Senator Karpisek, if this goes through and we...I mean there's one test for alcohol. As far as drug testing goes, will counties have to do...will one test cover all Schedule I's, or will they have to do six different tests to test for six different drugs? [LB595]

SENATOR KARPISEK: I assume they would have to do six different tests or more tests. The fiscal note was \$16,000 and, just to read that quickly, it said LB595 would require drug testing of drivers and pedestrians who die within four hours after being involved in an accident. The drug tests are performed by the coroner and the results are provided to the Department of Roads. The department is responsible for reimbursing the county for the cost of such tests and has estimated that their costs will increase by \$16,000 annually. There is no basis to disagree with this estimate. So I guess, in my opinion, if it was a huge, huge expenditure or a huge problem for them to test all the class...Schedule I's, that it would be a lot bigger fiscal note. [LB595]

SENATOR COASH: Thank you. [LB595]

SENATOR MCGILL: Senator Lautenbaugh. [LB595]

SENATOR LAUTENBAUGH: Thank you, Senator McGill. Senator Karpisek, so just so I understand, you're bringing this so that this information might be available to whom? [LB595]

SENATOR KARPISEK: To the victims' families, again, and there is no...how am I trying to say this...if someone would be killed by a drunk driver, they could probably litigate against the drunk driver for damages. If someone was very intoxicated on something that isn't tested for right now and it's...that you don't know that. I mean, they would just say, well, it was just a crash. Someone was at fault and it would leave that family a way to litigate against the responsible party. [LB595]

SENATOR LAUTENBAUGH: Thank you. [LB595]

SENATOR LATHROP: Any other questions? I don't see any. Do you want to stick around to close, Senator? [LB595]

SENATOR KARPISEK: No, I'm going to go try to get a bill out of Government Committee. Thank you. [LB595]

SENATOR LATHROP: Good luck with that one. [LB595]

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SENATOR KARPISEK: Yeah. (Laughter) [LB595]

SENATOR LATHROP: Depending on whether I want you to get it out or not. (Laughter) [LB595]

SENATOR KARPISEK: Good point. [LB595]

SENATOR LATHROP: Yeah. I may or may not really want you to prevail in that effort. [LB595]

SENATOR KARPISEK: Thank you for your reality. Thank you, committee. [LB595]

SENATOR LATHROP: Okay. Do we have any proponents of LB595? Anyone here in opposition to LB595? Anybody in a neutral capacity? [LB595]

SENATOR COASH: Do you want to stay and close? (Laugh) [LB595]

SENATOR LATHROP: And Senator Karpisek waives closing,... [LB595]

SENATOR MCGILL: Fabulous. [LB595]

SENATOR LATHROP: ...so that will close our hearing on LB595. Next is Senator Pirsch, LB510. [LB595]

SENATOR LATHROP: Anybody fetching Senator Pirsch? []

CHRISTINA CASE: They're fetching Senator Pirsch. []

SENATOR MCGILL: Extraordinarily quickly, so I doubt they were prepared. []

SENATOR ROBERT: We should have just sent Karpisek down to get him, because they're both in the same room. []

SENATOR LATHROP: The last one, Senator Pirsch, lasted about three minutes.

SENATOR PIRSCH: Very good. We'll see if we can do that.

SENATOR COASH: Can you beat it?

SENATOR PIRSCH: What's that?

SENATOR COASH: Can you beat it?

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SENATOR PIRSCH: Three minutes? I don't know about that. I'll try. Never in my life, I don't think, have I gotten it that short, but...

SENATOR LATHROP: LB510. [LB510]

SENATOR PIRSCH: Members of the Judiciary Committee, I am State Senator Pete Pirsch, for the record, P-e-t-e P-i-r-s-c-h, representing the Legislative 4th District, also the sponsor of LB510. LB510 creates the Nebraska Crime Victim Fund and authorizes the Crime Commission to serve as the administrator of that fund. The new fund would be funded, it would consist of a dollar...a new dollar surcharge assessed on defendant fines or other penalties for state or local criminal and traffic offenses. Under my bill, these funds would be distributed to three sources, I'm sorry, three ending points: the VINE network, or Victim Information network...Notification, rather, Everyday network; secondly, comprehensive crime victim assistance programs; and thirdly, nonprofit organizations working for the benefit of the crime victim. In addition, LB510 authorizes the director of the Department of Correctional Services to authorize deposits of up to 5 percent of wages earned by an inmate participating in the work release programs. Such deposits would go to the Victim's Compensation Fund, which serves as a funding resource for the Crime Victim's Reparations Program. That's an existing program, the CVR, that's under the Crime Commission. For every dollar that we put into that fund, the federal government will...for every dollar we put in for the sake of victims, to be used for victims, the federal government comes along and matches that to a level of 60 percent. So for every \$1 we put in, they put in 60 cents. Inmates work for private businesses on the grounds of Nebraska state correctional facilities. Currently, these inmates contribute up to 5 percent of their wages to the Victim's Compensation Fund. So there's a bit of a parity issue here. Those who are working on the grounds of the correctional facilities already donate 5 percent to the...for the benefit of making their victims whole. But if you're given an additional privilege of getting work release and thereby for release from the institution, you are not required to pay 5 percent. So this is a bit of a parity issue we're talking about here today and the underlying concept throughout this bill is victims have really...are being doubly victimized. They incurred the assault or whatever crime that befalls them and then the costs of that crime. The medical bills, the mental health counseling, the funeral expenses fall on the backs of those victims months and years afterwards. And so this bill is designed to put the costs of crime on those who cause the crime, the criminals, and internalize those costs. And so I think it makes perfect sense, as criminals are attempting to pay their debt to society, make good to society for the crimes that they've committed. So that is the sum and substance of my bill and I will close at the end. Thanks. [LB510]

SENATOR LATHROP: Okay. Any questions? Senator Council. [LB510]

SENATOR COUNCIL: Yes, thank you, Senator Pirsch. I have a couple of questions.

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[LB510]

SENATOR PIRSCH: Sure. [LB510]

SENATOR COUNCIL: Number one, the Crime Victim's Reparations Program, the committee already has heard LB78, which provides for the 5 percent for inmates who work outside of the institution, are employed by private enterprises, or are on work release. So the necessity for that portion of LB510 appears to already be addressed through LB78. So if that is the...if that is the case then we would be looking at, in terms of LB510, just the \$1 surcharge. [LB510]

SENATOR PIRSCH: You're saying in terms of substantive differences between this bill and... [LB510]

SENATOR COUNCIL: Right. [LB510]

SENATOR PIRSCH: ...and a different bill... [LB510]

SENATOR COUNCIL: Right. [LB510]

SENATOR PIRSCH: ...that there's some funding mechanisms that are similar, and I think it's Senator Gay's bill. [LB510]

SENATOR COUNCIL: Yes. [LB510]

SENATOR PIRSCH: Correct. I think he may have dropped it, and I don't know the bill number, but if it's been already through Judiciary Committee, that's correct. And I haven't looked at his bill to see if there's any substantive differences, but when I heard of his concept as well, this is something that I've been actually anticipating introducing for years now as a... [LB510]

SENATOR COUNCIL: Okay. Well, in terms of just my review of LB510, the primary substantive difference has to do with the \$1 surcharge and the... [LB510]

SENATOR PIRSCH: I think that could be right, yeah. [LB510]

SENATOR COUNCIL: ...and the Nebraska Crime Victim's Fund. And my question is, to your knowledge, is there any particular reason, assuming that the \$1 surcharge is something that the committee and then ultimately the body wishes to assess, is there any reason for establishing a new fund and having the Nebraska Crime Commission administer those as opposed to setting up a separate fund under the existing CVR program? [LB510]

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SENATOR PIRSCH: Yeah, and I tell you, I appreciate that. The CVR program has a specific usage and that is to distribute those funds through the existing mechanism, so I think that's the reason that we...we're doing something different with that dollar that's derived from the surcharge on defendant fines. And again, those are going to the VINE network which is utilized, for instance, if you're the victim of an assault, a domestic assault or some kind of an assault or some other crime and you want to be on guard, if the person who committed the crime has been released from prison, and you want to be aware of that, notified of that. And so that might be one of the usages of the VINE network and so that is not currently...that usage is not part and parcel to the Crime Victim's Reparations Program, the CVR. That just distributes monies to make victims whole. And so it's a different type of usage. But if you're suggesting that maybe you can use the CVR and just broaden that program and provide that. [LB510]

SENATOR COUNCIL: Yeah, to administer that. [LB510]

SENATOR PIRSCH: I really...I don't...I mean I'm more worried about the function than the form and I invite you to use your prerogative in any way you see fit best to do it. [LB510]

SENATOR COUNCIL: Okay. Okay. I just don't...I just don't see a need to create another... [LB510]

SENATOR PIRSCH: Sure. If you can... [LB510]

SENATOR COUNCIL: If there's some way, again assuming the \$1 surcharge is something that the body wants to see occur, why that...since the only aspect of LB510 that's different from the program administered under the CVR is VINE, is that not something that can also be administered under the CVR? [LB510]

SENATOR PIRSCH: Yeah. I mean it's just one approach. If you can find a way to get at what's, you know, the end effect of that through the existing program. You know, I certainly see the merit in what you're saying, don't set up new funds if you don't have to, so. [LB510]

SENATOR COUNCIL: Yeah, a new bureaucracy, I mean someone to administer a new fund and... [LB510]

SENATOR PIRSCH: Absolutely. [LB510]

SENATOR COUNCIL: ...any costs associated with that. Okay. [LB510]

SENATOR PIRSCH: Absolutely. Yeah. [LB510]

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SENATOR COUNCIL: Thanks. [LB510]

SENATOR PIRSCH: You bet. [LB510]

SENATOR LATHROP: Any other questions for Senator Pirsch? I do have a question, maybe you can address it for us just briefly,... [LB510]

SENATOR PIRSCH: Sure. [LB510]

SENATOR LATHROP: ...and that is the fiscal note. It looks like the money...like we bring in a certain amount of revenue and spend just as much putting this together. So I don't know if any of it is ever getting to the victims or am I missing something as I read that? [LB510]

SENATOR PIRSCH: Well, I mean, that's certainly not the intent. I didn't, you know, I'm sorry, I didn't review the fiscal note thoroughly, but I don't think that's what's going to be happening. I think our end projections are that there's going to be a good perhaps half million dollars infused into the joint end uses for victims here, so it certainly would not be eaten up by additional administrative costs. I think that's...and so I'll take a look at that fiscal note but I don't think, in interpreting it, that it would signify that the additional costs would be enough. I think at the end of the day, you're going to see by far...I mean, this money is intended to be...to go to the uses that I just highlighted, so I... [LB510]

SENATOR LATHROP: Okay. [LB510]

SENATOR PIRSCH: Yeah, and perhaps I'll have a chance to... [LB510]

SENATOR LATHROP: Well, maybe...I see Janice here from the Supreme Court, maybe we'll hear what the court has to say about it. [LB510]

SENATOR PIRSCH: Oh sure. [LB510]

SENATOR LATHROP: All right. Thank you, Senator Pirsch. [LB510]

SENATOR PIRSCH: Very good. [LB510]

SENATOR LATHROP: Any other questions? And you want to close, is that right? [LB510]

SENATOR PIRSCH: True. Thank you. [LB510]

SENATOR LATHROP: Thank you. Proponents of LB510, please. [LB510]

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JAIMEE NAPP: (Exhibit 1) Thank you, Senator Lathrop and members of the committee. Thank you for allowing me this opportunity to speak in support of LB510. For the record, my name is Jaimee Napp, it's J-a-i-m-e-e N-a-p-p, and I'm the founder and executive director of the Identity Theft Action Council of Nebraska. I'm also a victim advocate and a board member of the Nebraska Coalition for Victims of Crime. For those of us who work in the crime victim service field, we are painfully aware of the lack of funding to not only keep Nebraska victim assistance programs afloat but also to allow them to expand in a necessary way. Nebraska is one of the few states in the country that has not created an additional funding stream to grant funds to victim assistance programs and adequately fund their victim compensation program. LB510 would create a funding source to pay for the statewide VINE, which we talked about, which allows the victims to be notified when their offender's custody status changes, and also adequately fund the compensation program and provide additional dollars. I do want to make a comment to clarify for Senator Council about why we're creating an additional fund and the reason being is that currently the Crime Reparations Fund can only be paid out to violent crime victims who are bodily harmed. And creating this new fund of additional money that we can grant out to victim assistance agencies, we want to make sure that that money is available to victims who are not physically or bodily harmed necessarily, which would include something like stalking victims and other types of victims, so that a broader range of agencies could apply for those funds. I have provided a handout of research that I've done/conducting, surrounding states, how much revenue they generate for their victim compensation programs and their granting funds, how they generate, and how it is spent. Just to showcase the difference, I'll compare Nebraska versus Iowa. Nebraska is the top one on the front page and Iowa is the bottom one on the second page. In 2007, Iowa paid out almost \$5 million in crime victim compensation and granted an additional \$3 million to agencies in their state. Nebraska's budget estimate for 2009 is a meager \$97,000 for crime victim compensation and will grant out zero additional dollars. And again, this is because we haven't created an additional funding source. As you can see by looking at this, states have come up with creative ways to generate this revenue using different things of court costs, criminal and other types of surcharges. What I'm asking is for your support of the overall idea of this concept and exactly how that revenue is generated is certainly open for discussion and debate. I would also ask the committee to possibly push for an interim study to take a closer look at the issues that the victim assistance agencies are facing due to the lack of funding, the impact that this has on the crime victims they serve, and also uncover possible funding sources we could use. So thank you. [LB510]

SENATOR LATHROP: Very good. Thank you, Jaimee. Senator Council. [LB510]

SENATOR COUNCIL: Yes, and thank you, Jaimee, but I guess maybe I wasn't making it clear. What my question to Senator Pirsch was, was rather than establish this new fund and have the Crime Commission administer it, have...instead, have the program that is outlined by LB510 administered under the current CVR program and the program

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that's outlined in LB510 is not governed by the same terms as the CVR. I'm trying to reduce bureaucracy. [LB510]

JAIMEE NAPP: Right. [LB510]

SENATOR COUNCIL: It's not...and I appreciate... [LB510]

JAIMEE NAPP: Sure. [LB510]

SENATOR COUNCIL: ...the fact that...in terms of the crime victim assistance that is designed or intended to be addressed through LB510 is different than that which is authorized currently to be addressed under the CVR. I'm just thinking that the same bureaucracy could administer both the current CVR and administer the programs under LB510. But in that regard--and it was also one of the points that I was getting to and Senator Lathrop spoke to it--if you look at the fiscal note on LB510, it indicates that, based on the estimates of what the \$1 would generate, all of it would go to the VINE Program and there would be no funds remaining for crime victim assistance programs. [LB510]

JAIMEE NAPP: And actually, that...the way that it should be, and I haven't, I apologize, I haven't looked at the fiscal note clearly, but it should be split between paying for that VINE Program off the top. We know every year how much we need to pay the federal government to have this VINE Program, and then any remaining dollars off of that would go to grant out to victim assistance agencies. [LB510]

SENATOR COUNCIL: But I'm just saying, but the Supreme...the Crime Commission requested the Supreme Court to give an estimate and the estimate was that with the \$1 surcharge it would generate between \$200,000 and \$250,000 per year, and that the VINE Program, to operate that, is \$291,000 a year. [LB510]

JAIMEE NAPP: Uh-huh. [LB510]

SENATOR COUNCIL: So the fee would not even generate enough revenue... [LB510]

JAIMEE NAPP: Uh-huh. [LB510]

SENATOR COUNCIL: ...to even cover... [LB510]

JAIMEE NAPP: Uh-huh. [LB510]

SENATOR COUNCIL: ...the operation of VINE. I think that was the point that... [LB510]

JAIMEE NAPP: Right. [LB510]

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SENATOR COUNCIL: ...Senator Lathrop was getting to. [LB510]

JAIMEE NAPP: And that very well... [LB510]

SENATOR COUNCIL: Well may be? [LB510]

JAIMEE NAPP: That very well may be that we would need to find an additional funding source besides just that \$1, and a lot of states use multiple ones, so that might be something you should look at. [LB510]

SENATOR COUNCIL: Okay. Thank you. [LB510]

JAIMEE NAPP: Uh-huh. [LB510]

SENATOR LATHROP: Very good. [LB510]

JAIMEE NAPP: Thank you. [LB510]

SENATOR LATHROP: Thanks, Jaimee. Good to have you back. Anyone else here as a proponent of LB510? [LB510]

ANTHONY CATO: My name is Anthony B. Cato, Jr. I am a... [LB510]

SENATOR LATHROP: How do you spell your last name, Anthony? [LB510]

ANTHONY CATO: C-a-t-o. [LB510]

SENATOR LATHROP: Thank you. [LB510]

ANTHONY CATO: The reason why I'm here today, I am a proponent of LB510 for various reasons. My primary one is that on September 7, 2007, a drunk driver hit me, at one point left me paralyzed. I still suffer today from some paralysis, some inability to use my right hand, balance issues. At the time of the accident, I was a functioning, 6-foot-3 officer of the court of Douglas County. I also had a small security business. I still play basketball consistently. I played at the University of Nebraska-Lincoln. And then because of this one ten-second accident, my life was destroyed in part. The outlook was bleak. I was told I'd never walk again, let alone doing many of the things I can do today, which is by the grace of God and his ability to put the right people in place for me. The court system had encouraged me to apply for the Crime Victim's Assistance Fund. Initially, I was denied. I was denied because my crime that I was a victim of didn't meet the criteria, let alone was there enough funding in the funds for me to seek help. I thought that was the most devastating thing, news I could ever hear, because he was

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so adamant when I went before the judge. He said you need to apply for this today before you leave the courthouse. And I'm thinking, there might be a ray of hope, some help would be on the way. The problem that I have is, is that being denied because (a) there was a lack of funds available and (b) that my crime didn't fit the criteria. That's a hurt you can't replace. I agree with Senator Pirsch in regards to his bill, but basically there needs to be less bureaucracy and more broadening of the fund. How you do that, you could do it in various ways. One way would be to, as we in society say when something comes before us and it comes before the court, we have a way of making...society making people whole. You can never make me whole. There's no way in the world you could ever do that. There's going to be a time, or I hope, that I won't need anything, but as I get better, provided that I don't get any older faster, I'm going to need certain things. The Crime Victim's Assistance Fund cannot give me that. They cannot assist me with that because they don't have the money to do so. If we put in place a system where we attach, through probation, parole or work release program, where these inmates learn that what you do is at a cost. There's a cost of your freedom being taken away but there's also some reward, because if you say I injured someone and caused a catastrophic injury, I can go to jail and I'm alleviated. There's nothing really else can be done to me. Well, we as society think that's a crock. We should put in place where you must work either for the citizens, the citizens of Nebraska, through work release, caring for the grounds, inside or outside the property, and the money that they earn or the wages that they earn, 5 percent or 2 percent of that, automatically be put into a fund to help make those individuals better or make their quality of life better without taxing the taxpayers of Nebraska. [LB510]

SENATOR LATHROP: Thank, Anthony. We have a light system here so when we get to red, that's the time we permit. Let's see if people have questions for you, though. We do appreciate your testimony and you bring up a great point that we've long-recognized in this committee about underfunding of the Crime Victim's Reparation Board. [LB510]

SENATOR MCGILL: And congratulations on overcoming some of those original diagnoses. [LB510]

SENATOR LATHROP: Yeah. [LB510]

ANTHONY CATO: Thank you. [LB510]

SENATOR LATHROP: Are there any other questions for... [LB510]

SENATOR COUNCIL: Always good to see you, Anthony. [LB510]

ANTHONY CATO: I keep pushing along. [LB510]

SENATOR COUNCIL: That's right. [LB510]

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SENATOR LATHROP: Well, very good. Thank you for your testimony today. Are there other proponents of LB510 here today? [LB510]

ROBERT SCHMILL: (Exhibit 2) Good afternoon. For several of you, you've seen me here before and I'm here again, but for those that don't, my name is Bob Schmill, and that's B-o-b S-c-h-m-i-l-l, the founder of the Matt's Dream Foundation, father of Matt Schmill, who was killed by a drunk driver on April 24, 2004. As a victims' advocate organization for the citizens of our state that are victims or families of victims of a crime, we are in favor of this bill. As far as going through the testimony that I gave you, as more or less we've already kind of talked about it a little bit, but really, who is the victim's fund for and why is there no funds available? That's up to you to decide as far as what you want to put in. But during the time that we are going through the process of being a new victim, we are asked hundreds of questions. We're praying for recovery. We're mourning the loss of our loved one. With the forms and everything that we are told to fill out, we do that, but then we are told that there is a fund that will help. There's a way that we can help as far as the burial. Now with our case, with my son's case, we had money put away, not for his burial but for his college education, and so that was the money we used for his burial. But many do not have that. Many do not have the money to pay for that and they look for a fund and they're given a packet of information and a form to fill out, and they turn it in and then find out there's no funds there. Out of over or close to 100 families that I've spoken to, only 2 have received any kind of assistance that...and it was more or less just a few hundred dollars. It was a token. And most of them refer to this fund as a joke, another waste of their time. The amounts of the \$1, the amounts as far as getting up to 5 percent of certain wages earned by the inmate on work release are there. And the figures that I put down I found out are just a little high but the thing is, is it can get to that point and it would be nice to be able to get to that point to where we do have over \$500,000 or half a million dollars to be able to help with those, as the gentleman before me. With all the rights that are being given to those that break the law, it's time for the victims and their families to receive their rights. As a victim when you sit in court, who has the rights? When you are asked by the media about the case and you're told not to discuss it, who has the rights? Yes, you are allowed to have your friends and relatives write a letter in to the judge and you have the right to have a victim impact statement before the person is sentenced, but there are several judges--and those that are in law, you probably know which judges those are--there are several judges that don't want to hear your victim impact panel...your victim impact statement, nor do they...they even say, I have not read any of these letters; I know what's in them. Who has the rights? It's now our turn. We ask that you advance this bill, turning a joke into something that would be beneficial to all victims of crime. I thank you for your time and I'll open up for questions. [LB510]

SENATOR LATHROP: Thanks, Bob. Good to have you back. Are there any questions for Bob? I don't see any. [LB510]

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ROBERT SCHMILL: Thank you. [LB510]

SENATOR LATHROP: Thanks. Anyone else here as a proponent of LB510 caring to testify or wishing to? (See also Exhibit 9) Are there any opponents to LB510? [LB510]

ROBERT CREAGER: Members of the committee, my name is Bob Creager, C-r-e-a-g-e-r. I'm president of the Nebraska Criminal Defense Attorneys Association. Perhaps I should be neutral. I think that my opposition seeks to only raise some points of concern. I hear two debates: Should we fund victims' injuries through some sort of state mechanism separate and distinct from seeking contributions from those that cause the injuries? We're all aware that current law requires the courts to order restitution from those that actually cause the injuries. And to the extent that state taxpayers or citizens that pay fines or whatever are funding that through an indirect tax I think is a decent policy debate that ought to be had about whether we should simply adequately fund. My concern is I think there's a constitutional provision that says that all fines exist for the benefit of the school districts or the school boards, and the way I read the \$1 assessment, they're actually calling it a fine, paid by people that pay speeding tickets as well. I doubt that that would be constitutional. Years ago I think I represented Senator DeCamp in an effort to fight over a \$1 assessment for parking tickets and it went all the way to the Supreme Court, so I have some experience in that area. I think you ought to look carefully at whether that \$1 creates more problems than it solves. It also apparently doesn't seem to actually fund anything except the administration of the program. So nobody can be philosophically against seeing to it that victims of crime or criminal acts are adequately compensated if insurance isn't available or public assistance isn't available, and the taxpayers are asked to pay it, then we should all pay it and not just certain people that get speeding tickets. But I think the argument was we need creative funding. I suppose the question is, why do we need creative funding? If it's a program worth funding, fund it; if it's not, don't. [LB510]

SENATOR LATHROP: Any questions for Bob? I don't see any. Thanks, Bob. Any other opponents? Anyone here in a neutral capacity? [LB510]

JANICE WALKER: Good afternoon, Senator Lathrop,... [LB510]

SENATOR LATHROP: Janice. [LB510]

JANICE WALKER: ...members of the committee. I'm Janice Walker, the State Court Administrator, and I am here to just have a little discussion with the committee about the implementation of LB510. And my primary concern about LB510, as originally drafted, was with paragraph (4) which talks about the money having to be collected before anything else that the defendant is assessed. I believe Senator Pirsch is considering an amendment that would delete that particular language, but I just wanted to...I just

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wanted to bring to the committee's attention that there may be some confusion with the way this is drafted. If you read paragraph (2), it talks about the surcharge being imposed...well, excuse me, in paragraph (1), in addition to any fine or other penalty for a defendant who pleads guilty or is convicted there is this \$1 surcharge. Then paragraph (2) talks about the surcharge being imposed on defendants who participate in pretrial diversion. I'm not sure if that's in addition to all defendants. There's just a little confusion in my mind of who exactly the courts would collect this money from. It says someone who is sentenced to probation or community service. I really can't tell if paragraph (2) is clarifying paragraph (1) or if it's different language. I have previously communicated with members of this committee, as well as with Senator Pirsch, that the Supreme Court's hope is that when penalties, costs, fees are assessed through the court process, that those monies be used for court programs, so I'm not bringing that up today in this testimony. But I would say that this is a worthy cause and would be happy to find a funding mechanism. I'm just not sure that as this is written or as Senator Pirsch intends to amend it that it is clear enough for the courts to really implement it. [LB510]

SENATOR LATHROP: Did I hear you say you'll go ahead and find some money?  
(Laughter) I think that's what you just said. [LB510]

JANICE WALKER: Well, you know, there is that stimulus money but I...(laughter)  
everybody is looking... [LB510]

SENATOR LATHROP: Yeah, well, that's... [LB510]

JANICE WALKER: ...everybody is looking to that. [LB510]

SENATOR LATHROP: That path is pretty well worn around here. [LB510]

JANICE WALKER: Yeah. Yeah. I think there was mention made of an interim study and maybe that's the way this should be handled. [LB510]

SENATOR LATHROP: Yeah, I appreciate the point of LB510 because, as we've sat here now for three years listening to testimony at various times and particularly with the Crime Commission folks, when they talk about the Crime Victim's Reparations Board, we could get federal money if we'd just stick some of our state funds in there and I think that's something that... [LB510]

JANICE WALKER: Right. [LB510]

SENATOR LATHROP: ...Senator Pirsch's bill was maybe driving at. We haven't put it in there and now we have all these people that think this fund is going to give them something because they pick up a brochure in the probation office, and all we're doing is burying young kids, I think. That's about all we're spending the money on, I think,

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which is disappointing. [LB510]

JANICE WALKER: And as for the fiscal note, because this is on traffic, criminal cases only, this really is not bringing in that much annually for the fund. But I agree that this fund has been in place for a long time and has never been really implemented because there's no money. So it is really unfortunate and there's no way that I would say this is not a very worthy cause certainly. [LB510]

SENATOR LATHROP: Okay. Very good. Thanks, Janice. [LB510]

JANICE WALKER: Yes. [LB510]

SENATOR LATHROP: Any other questions? Anyone else here in a neutral capacity? (See also Exhibit 7, 9) Seeing none, Senator Pirsch, would you care to close? [LB510]

SENATOR PIRSCH: (Exhibit 3) Yes, thank you. And procedurally, perhaps if I could have one of the pages, I meant to hand out this amendment that I'm proposing to placate some of the concerns that were brought forward by the courts in regards to some of the language in the bill, and it would just, in brief, eliminate, on the green copy that you have on page 2, it would delete, in Section 1, sub (3) altogether, which starts by saying, "The surcharge shall be paid within ten days of imposition." And it would delete, in lines...the first sentence, starting on line 14, after that paragraph that starts, "Money paid to the court by a defendant shall be applied to the surcharge before being applied to any fine, penalty, cost, or other assessment imposed on the defendant." And we would add the amendment also adds nonwaivable language. In other words, the court costs once...would be imposed in all cases. And just a technical correction on page 1 of the green copy. It should refer to 83-184, not 83-183. So that's the meat of the amendment. In any case, just kind of some closing thoughts. Again, the importance when we're talking about, you know, we all agree that there's a need there, a dire need. Victims...and I can tell you this from my experience as a prosecutor, had a gentleman, a recent immigrant actually to this country, who was brutally assaulted by a baseball bat, a gentleman wielding a baseball bat, a lot of bodily injury. The gentleman attempted to shield his head and the bat just snapped his forearm, the bone in his forearm in two. You know, coming to this country, not aware of how the law works, the gentleman thought, as in his country, he's on his own and he...this gentleman, whose name is Gatluak, attempted to fix his bone by taking one of his socks and dangling it and tying his two bones together, the bone pieces together. So the criminal justice system, you know, brought him in. We've got a good system in place for addressing, you know, the criminal punishment for those who commit crimes and so, you know, we brought him in as a witness for the criminal case months and months down the line, after this assault. By that time his two bones had fused together and healed at an incredible angle and causing him pain, even, you know, a year down the line and you could, you know, it was just incredible that we're at that level. But I can tell you there's...this kind of thing

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happens all the time and so we need to do something I think to make sure, and I think we all agree on that. So we got two choices and I would...I think that, you know, that the costs that are created by crime should be borne by the criminals who create those costs. And so we should internalize them and it's possible to under this mechanism in a way that doesn't unduly burden anyone. It just has internalized the costs. And it's part of whether you believe, you know, there's a debate, lock them up and throw away the key or rehabilitate. But whether you believe one or the other, you know, either way, if you believe in rehabilitation, this is part and parcel of your ability to rehabilitate, is make good to the people who you victimized in causing your crime, so it's, you could argue, rehabilitative in nature. This bill puts this fund as the payer of last resort. You have to go through your insurance first, all other mechanisms. This is just the people who are saying, like Gatluak, I don't have any other way to get my arm straight. And so that is...these are desperate people and people who don't have means in society is who the costs of these crimes are being borne by. And so I think it is something that's desperately needed and in a large way. And you know, we, in 2002, this program was recognized as valid and was funded in the hundreds of thousands; 2002, hard times come, and essentially the program was sacked. General Fund needs those dollars; too bad for victims. And so it was taken and we haven't done anything about it since. And so it is a joke and...the current status of it, and I just feel like we're doubly victimizing victims of crime, first by the original crime and now by them having to live with the consequences, the pain, the medical expenses, the mental health. This gentleman, Gatluak, ended up having severe mental health problems as a result, I would posit, of having to deal with these type of injuries. So right now we're only funding...you have to have...we have such limited funding, you have to, with all the multitude of crimes, only eight particular crimes get...are even eligible and most even among those are not even funded, I understand in 2007. And even if you are one of those lucky few, the amount that you're paid is capped to a level that it really, in most cases, I would posit, doesn't come near reaching your actual expenses. So I think the need is there. I think, you know, if there's concerns about the actual way that it's structured or if more dollars need to be allocated, you know, I'd be interested in working with the Judiciary Committee in finding a way to make that happen. And I defer to, you know, your...you know, if you see additional needs there or better mechanisms that can achieve that, be happy to work with you. So that said, I will close. Thanks. [LB510]

SENATOR LATHROP: Okay. Very good. Thanks, Pete. We appreciate your coming down today. That will close the hearing on LB510, and we'll go to Senator Fulton and LB659, data collection. Senator Fulton, welcome. [LB510]

SENATOR FULTON: Thank you, Mr. Vice 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 to you LB659 which proposes a pilot program by which the Community Corrections Council may collaborate with private agencies to improve community reentry of those released on parole. The pilot program would consist of the private agencies' compilation of data from a select

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pool of 12 parolees. Such data would then be submitted to the council. Cost of such a program would be equivalent to one FTE. It's my understanding that the introduction of this bill has already generated some productive discussions between the council and various private agencies. Thank you. [LB659]

SENATOR LATHROP: That's it? [LB659]

SENATOR MCGILL: Very short. [LB659]

SENATOR LATHROP: That was very short. Okay. Well, let's see if there's questions. You're leaving. (Laughter) Sit back down in that chair, little mister. (Laugh) Any questions for Senator Fulton? Senator Coash. [LB659]

SENATOR COASH: Thank you, Senator Lathrop. Senator Fulton, I see what you're trying to do as far as gather some data. Just scientifically, is 12 people enough to get enough data to really do something meaningful with it? [LB659]

SENATOR FULTON: We're not positive. It's a start. It's a starting point. The bill really provides a mechanism for discussion. I'll tell you, it's actually a pretty good story behind this. There is a...I was out knocking on doors last year for my campaign and a gentleman in my district asked if I'd be interested in pursuing this, he has some passion for this, and so I agreed to bring this bill as a mechanism for discussion. So is 12 an appropriate number? Perhaps not. But again, the nature of moving something forward means that something has to be chosen. [LB659]

SENATOR COASH: I understand. I bring it up, just my studies tell me that if you're going to do...if you're going to really get some meaningful data from something, you got to have a pretty large sample size; otherwise, you just kind of have, you know, potentially 12 separate cases that put together don't have anything meaningful as far as projecting future or anything like that. [LB659]

SENATOR FULTON: Yeah, the sample size could be restrictive in terms of what data we want to collect but, at the same time again, it has...we have to have some starting point and this at least is a mechanism springboard by which we start discussion. [LB659]

SENATOR COASH: I understand. Thank you. [LB659]

SENATOR LATHROP: Any other questions for Senator Fulton? Do you want to stay around to close? [LB659]

SENATOR FULTON: No. [LB659]

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SENATOR LATHROP: You're out of here, back to Appropriations. [LB659]

SENATOR ROBERT: Stimulus money. [LB659]

SENATOR FULTON: To speak of that stimulus package. (Laughter) [LB659]

SENATOR LATHROP: Oh, right. Well, we were just talking about that in the preceding bill. [LB659]

SENATOR FULTON: I heard. [LB659]

SENATOR LATHROP: Anybody here as a proponent? Anybody here as an opponent? Anyone here in a neutral capacity? Okay, that will close the hearing on LB659 and that will bring us to... [LB659]

SENATOR ROBERT: Oh, a 70-page bill. [LB518]

SENATOR LATHROP: Thanks. LB518, the undertaking of Senator McGill. [LB518]

SENATOR MCGILL: "Woohoo!" This is a great hearing so far. (Laugh) Chairman Lathrop, members of the committee, I'm Amanda McGill, M-c-G-i-l-l, and I represent the 26th District. Over the years, the distinctions between first- and second-degree murder and voluntary and involuntary manslaughter have become unclear. I introduce LB518 to begin a process of revising our homicide statutes. At this point, I'm asking the committee to hold the bill; however, I will be introducing an interim study to review the issues addressed in LB518. I will be inviting representatives of interested parties to participate in a working group. Their task will be to revise and clarify our homicide statutes. It is my intention that the group be a balanced one, including defense attorneys, prosecutors, professors, and judges. There are persons following me that will describe some of the problems of our current statutes and will talk about what LB518 does to address them. Briefly, some of the issues addressed include clarifying the definitions of first- and second-degree murder; redefining manslaughter to include new definitions of voluntary and involuntary manslaughter; adding new definitions for first-degree felony murder and second-degree felony murder, and adding definition of terms not currently in the statute, such as malice, intentionally and unintentionally. It is my hope that LB518 will serve as a guideline of the issues that need to be reviewed and that the members of the working group can come to an agreement on the needed clarifications. Their recommendations will serve as the template for a proposed bill in the future. I'd love to answer any questions but I know the folks following me are much more educated on this issue. [LB518]

SENATOR LATHROP: Senator Council, do you have some question? [LB518]

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SENATOR COUNCIL: Oh no. [LB518]

SENATOR LATHROP: Okay. All right. Thank you, Senator McGill. Proponents of LB518. [LB518]

ROBERT CREAGER: (Exhibits 4 and 5) Chairman Lathrop, members of the committee, my name is Bob Creager, C-r-e-a-g-e-r, the president of the NCDAA. I'll talk fast because I have a lot to say in a short period of time. This is a happy day for me because when I first got involved in the practice of law and tried my very first murder case one year after law school, I started to discover problems with the definitions of what is or isn't first- or second-degree murder, and took every opportunity I could along the way to complain about it, either in appeals courts or in legislative hearings. And I passed around a letter to the editor I wrote to the Lincoln Journal in response to comments by then-Governor Johanns about efforts to curtail appeals and solve problems with these things, not by addressing the problems in the law but by limiting appeals. So I'm glad that Senator McGill was kind enough to take on what I see is a very complicated and daunting task but one that's been overlooked for years. What I first learned is that the definition of premeditation for first-degree murder says that is the forming of an intent to act before acting. The time needed for premeditation may be so short as to be instantaneous provided that the intent to act is not formed before the act...is formed before the act and not simultaneously with the act. In other words, some jurors are asked to decide whether the intent and the premeditation occurred simultaneously. If it did, then it's second-degree murder. But if it incurred instantaneously before the deliberation then it's first-degree murder. And I have never understood how jurors in complicated cases can make that determination because that kind of proof is rarely available to direct evidence. I've observed in the 32 years I've been doing this that there are an awful lot of second-degree murder charges filed in Omaha cases and very few second-degree murders filed in Lancaster County cases because prosecutors differ on how close that distinction really is. The difference is dramatic because the way our current system operates, life without parole is the sentence for first-degree murder, whether it's capital murder or not, and 20 to life is the sentence for second-degree murder. For most of my career, I thought I understood what unlawful act manslaughter was. We call it sudden rage or quarrel manslaughter in Nebraska; that is, you kill somebody in passion. Well, for years that was an intentional killing in which the sudden rage or quarrel distinguished you from second-degree murder and you got ten years in prison, I think, at the time. Well, the Supreme Court figured out I guess a century later that, no, it really isn't an intentional killing, it's an unintentional killing. And so we have a definition of...we don't really even have an involuntary manslaughter. We read in the newspaper the other day about this poor family in which the man...a gun discharged and kills his wife, and I read in the newspaper that Lancaster County filed manslaughter charges against him, relying on some 1890 case. In other words, honestly, it's a mess. And the model penal code which we adopted for all other crimes in this state in the late seventies, we didn't do it with the homicide provisions. So on behalf of the organization,

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I'm willing to submit my time, what I know and what I can contribute to the panel in hopes that...this isn't about defense or prosecution, this is about clearly defined lines where the Legislature knows who's going to get life without parole, who's going to get 20 to life, who's going to get ten, who's going to get five, and who's going to get a misdemeanor. [LB518]

SENATOR LATHROP: Okay. Thanks, Bob. Are there any questions? [LB518]

SENATOR COUNCIL: I just have one quick. [LB518]

SENATOR LATHROP: Senator Council. [LB518]

SENATOR COUNCIL: And I appreciate Senator McGill's statement that she intends to ask the committee not to move it forward, but I have a bill that is pending that deals with the issue of life without parole and one of the issues that has arisen as a result of the introduction of this bill is the whole issue of whether or not life without parole is constitutional. And I just...I just would like...appreciate hearing your opinion because I have requested an amendment of the bill I introduced. If it's passed, it will correct that, if you tell me you agree with my assessment. (Laughter) [LB518]

ROBERT CREAGER: You sure you have enough time? I've studied this issue myself. I've been involved in those cases. There are others behind me that have litigated the issue. You see, life without parole is kind of a legal fiction that's worked its way into the system and now shows up in the penalty provisions of the code. When I was practicing and Governor Orr was around, life sentences were subject to Parole Board hearings, to be commuted to a term of years, if the Board of Pardons would commute it to a term of years, and then they would become eligible for parole. That was what we did in this state for forever. There was never... [LB518]

SENATOR COUNCIL: Till 1990 something. [LB518]

ROBERT CREAGER: Yeah, and I think it was Governor Nelson that stopped the practice and, in my judgment, stopped the practice because of the death penalty. When it came back, the question always was, if somebody who was convicted and sentenced to death could find a way to get life and then find a way to get parole, well, then we couldn't take the worst of the worst and keep them locked up forever. So the issue of life without parole and capital murder has sort of clouded the issue of, you know...so there is a way to have life without parole. The problem is, in our bill, felony murder, aiding and abetting a murder, instantaneous but not simultaneous, premeditated...all gets you life without parole and they're all treated the same. So all of the Michael Ryans and the Hochstein and Andersons and the Randy Reeves and the people that are on death row who either got life or may get life, they're all in the same life without parole category. So I would suggest that the fix is to actually distinguish capital murder, that is murder in

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which there are aggravating circumstances found to exist, and make that sentence death or life without parole, and then look at every other homicide beneath that as being subject to a term of years or a life sentence which you could be looked at for parole. And I had an 80-year-old client who was convicted of conspiracy to commit murder and a 17-year-old client. So, you know, you have to look at penalties that aren't one size fits all. So I don't know if that answers your question but there is a way to attack that issue but I think it's in a broader bill like this one. [LB518]

SENATOR COUNCIL: Thank you. [LB518]

SENATOR LATHROP: Any other questions? I don't see any. [LB518]

ROBERT CREAGER: Thank you. [LB518]

SENATOR LATHROP: Thanks, Bob. [LB518]

JERRY SOUCIE: (Exhibit 6) Members of the committee, my name is Jerry Soucie. I'm an attorney with the Commission on Public Advocacy. I speak here in support of LB518. LB518 does, I think, three major things. One section of it that may get a lot of the publicity and focus would be on the provisions relating to first-degree murder. Second portion deals with amendments to the perjury statute, which I think is long overdue in view of a decision by the U.S. Supreme Court called Apprendi v. New Jersey, and followed up in the death penalty context, Ring v. Arizona. And thirdly, the bill does a lot to simplify and change the provisions concerning use of explosive devices, makes it different from arson. And I think any thinking prosecutor would certainly support those changes concerning explosive devices, the changes concerning perjury, and some of the changes associated with the first-degree murder. I don't see where they lose anything. I think they gain a certain amount of certainty that hasn't existed. Bob mentioned the problems with first...the difference between first- and second-degree murder, and I wholeheartedly concur with what he said. Douglas County typically takes the approach of second-degree murder as one thing, first-degree murder, a deliberation as something more than instantaneous or simultaneous but as he explained. A second problem with our current statute is that the same kind of conduct, depending on the particular prosecutor, can be treated differently and the bill addresses the difference between second-degree murder and what you might call sudden quarrel manslaughter. What we have finally figured out and discovered in light of the malice debate that the Supreme Court went around and around about and then the earlier, what was called the petit dispute between voluntary and involuntary manslaughter, is that in second-degree murder what is really involved there has to be a negative element that is an intent to kill but not the result of sudden quarrel. That's going to bite people in the backside here pretty quick because we finally figured it out. The second thing is that prosecutions are different throughout the state on motor vehicle homicides. Lancaster County will charge somebody who is .02, not intoxicated, with manslaughter for driving right of center. But if

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you're a white Nebraska state trooper driving in North Platte, drunk out of your mind and kill two of your trooper buddies, that prosecutor charges you out there with motor vehicle homicide as a Class IV felony. But a black man in Lincoln, Nebraska, who was not intoxicated but drove left of center, got charged with manslaughter and convicted. Now did the black man get prosecuted because he was black? No. But he did get the benefit because he was...you know, that the white man got? No, he didn't. Those kinds of things happen over and over. I see my time is up. Thank you very much. If there's any questions, I'd be happy to answer. [LB518]

SENATOR LATHROP: Okay. Well, Jerry, it's always useful to listen to your testimony on criminal matters. Anybody have questions for him? I see none. Thank you. [LB518]

JERRY SOUCIE: Thank you. Oh, I do have something to offer the committee regarding perjury... [LB518]

SENATOR LATHROP: Okay. [LB518]

JERRY SOUCIE: ...and it's...you can decide... [LB518]

SENATOR LATHROP: Maybe you can take two seconds and explain why we need to amend the perjury statute. What's the problem with it? [LB518]

JERRY SOUCIE: Well, the statute is unconstitutional because it makes materiality an element of the offense but requires the judge to make the determination of materiality. That statute is not constitutional. And it also puts all the discretion in whether to charge either, say, a police officer who commits perjury on an affidavit or a witness who commits perjury on the stand, who's called by a prosecutor, in the hands of the prosecutor who called that witness or helped the police officer prepare that affidavit. And I think what needs to happen is an amendment to allow in the appropriate case, for the judge, who was lied to, to either tell the county attorney to file...to investigate filing charges or to appoint a special prosecutor to do his job. Thank you. [LB518]

SENATOR LATHROP: Okay. Thanks. Anyone else here as a proponent? How about anyone here in opposition? Opponents? [LB518]

JOE KELLY: Members of the committee, my name is Joe Kelly, K-e-l-l-y. I'm a chief deputy Lancaster County Attorney. I'm here on behalf of the Nebraska County Attorneys Association and we are opposed to LB518. I'll acknowledge up front some of the comments made about, in particular, the need to look at the Apprendi issues in the perjury statute are well-founded. I won't argue with that a bit. I would say for a general purpose, as I look at this, I don't see clarification. I don't see the end to appeals or the end to problems with clarification. That's the nature of this business. And as long as there are lawyers and as long as there are lawyers on two sides of these things, I don't

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think you're ever going to avoid some of these appeals that we deal with today. But I really think this bill doesn't persuade me that there's a need for the legislation. It looks like a form over substance effort that discounts the tremendous flexibility that our judges have with indeterminate sentencing, a bottom and a top. We've been talking about murder up to this point but I think it's easier to understand if you look at a burglary or look at a robbery. A robbery can be a bank robbery with a gun or a robbery can be one person walking up to another person on the street and saying some menacing things and obtaining from that person the money. Those two don't have to be treated the same for sentencing purposes but they're both guilty of robbery under our statutes. So sometimes I wonder if we're just out there searching for a label that we're more comfortable with for the crime that was committed rather than overall equity and justice for the people who come into our system. The argument about the individual who's charged with manslaughter here for...in Lancaster County, Nebraska, for a gun violation might be a good example. The judge in that case, if there's a conviction, would have a tremendous amount of flexibility. So I simply say at this point we're opposed and that just saying that if we change a few things we're going to have more clarification doesn't convince me. [LB518]

SENATOR LATHROP: All right, Joe. Any questions? I do maybe want to ask you this. Senator McGill offered this bill and suggested that she wanted to study the issue. And we heard from the defense guys, obviously on the other side of the case typically from the county attorney's office, suggest that there are some problems or some...I'll just call them problems with the way...with the opinions blurring some of the distinctions between various forms of homicide. Do you agree at least that the opinions from the Supreme Court have left some blur in the line between the different grades of homicide? [LB518]

JOE KELLY: Sure, and I think there's always going to be some. But they've already alluded to the big circle that all of the attorneys back there and I went through on the malice issue and... [LB518]

SENATOR LATHROP: And we remember that well. [LB518]

JOE KELLY: Yeah. [LB518]

SENATOR LATHROP: But do you see some...do you see some benefit in having...I don't think, when they talk about sitting down over the interim, they mean a circle of defense lawyers that sit down and come up with a perfect solution, but I think the offer is to have some prosecutors and some lawyers that have done defense work at the level of handling homicide cases sit down and try to work through and clean up the classes or the levels of homicide so that it's more easily understood, not to create more appeals but to... [LB518]

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JOE KELLY: Well, put it this way, I think the association would offer up and have a couple of attorneys there to look at whatever the interim study is looking at. I'm not sure that we... [LB518]

SENATOR LATHROP: I'm not getting a...I'm not trying to get a commitment from you to... [LB518]

JOE KELLY: Yeah. No. [LB518]

SENATOR LATHROP: ...move off of we like what we got, but... [LB518]

JOE KELLY: Well, yeah. [LB518]

SENATOR LATHROP: ...it sounds like they think that there are some problems with the classifications. You recognize there's some problems with the classifications and, just as a matter of trying to take an important part of our criminal code and take some of the uncertainty out of it and the blurring of the classifications, your group would sit down and work with the... [LB518]

JOE KELLY: Sure. [LB518]

SENATOR LATHROP: ...criminal defense lawyers? [LB518]

JOE KELLY: Sure. [LB518]

SENATOR LATHROP: That would be great. [LB518]

JOE KELLY: Sure. Okay. [LB518]

SENATOR LATHROP: And we appreciate that. Thanks, Joe. Anyone else here in opposition to LB518? Anyone here in a neutral capacity? [LB518]

JIM CUNNINGHAM: Senator Lathrop and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Conference on whose behalf I testify today in a neutral position on this bill, and I would start by assuring you that, based on the previous testimony, I know that I am pretty far outside my element on this bill. But I do have a concern that I would like to raise for the record in the hope that perhaps we wouldn't have to keep returning to this in the future. My purpose is limited to just respectfully requesting that as you address this subject matter, and the working group as well, that you not overlook subarticle (c) of article (3) of Chapter 28. These are the unique sections of the Criminal Code that govern homicide when the one killed is an unborn child. This is designated in the Criminal Code as the Homicide of the Unborn Child Act. It was overwhelmingly

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passed by the Legislature in 2002. The intent behind that act was to create a set of statutes as close to parallel with the customary homicide law as reasonably possible. Therefore, our request is that, to the extent relevant and consistent, that you harmonize proposed changes in the parallel context of the Homicide of the Unborn Child Act. By way of just a couple of examples of this, Section 28-394 is now parallel to Section 28-306. The bill itself proposes a change to 28-306, and our position and recommendation and urging of the committee is that the similar change be made in 28-394. Similarly, in Section 8 of this bill, that should be harmonized with the relevant provisions of Section 28-393. And there are other relevant provisions as well. We would be pleased to work with the committee and also to share with the working group our concerns in this regard in the hope that this necessary harmonization could be accomplished. Thank you. [LB518]

SENATOR LATHROP: Thanks, Jim. Any questions for Mr. Cunningham? I don't see any. Anyone else here in a neutral capacity? (See also Exhibit 8) Senator McGill to close. And she waives. Okay, well, we'll look forward to the meeting of the minds on that one. [LB518]

SENATOR ROBERT: Yeah. Never come back. Done with this place. (Laughter) []

SENATOR LATHROP: That will close our hearings today. []

SENATOR MCGILL: We are done for the year. We're done with our hearings for the year. []

SENATOR LATHROP: For the year. []

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Disposition of Bills:

LB510 - Held in committee.  
LB518 - Held in committee.  
LB595 - Held in committee.  
LB659 - Held in committee.

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Chairperson

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Committee Clerk