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Judiciary Committee
November 16, 2010

[LR430]

The Committee on Judiciary met at 10:30 a.m. on Tuesday, November 16, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR430. Senators present: Brad Ashford, Chairperson; Mark Christensen; Colby Coash; Brenda Council; and Kent Rogert. Senators absent: Steve Lathrop, Vice Chairperson; Scott Lautenbaugh; and Amanda McGill.

SENATOR ASHFORD: Good morning, everyone. Why don't we get started? Senator Christensen has introduced LR430 and he is going to give a brief opening statement and then we will go to the testifiers. We're not going to use...thanks. We aren't going to use the lights but, you know, if we could keep the comments to about three to five minutes, which is the normal length, that will be great. Obviously, if there is information that the committee can work on and research, we'd be happy to receive that as well. I welcome my committee. Senator Coash is here. He does not have a name thing because we only have one, because of budget cutting reasons, we only have one name tag and it has to be carried around to everybody's committee, so don't let anybody say we're not cutting the budget around here. Anyway, welcome to Senator Rogert from Tekamah and Senator Council from Omaha; LaMont Rainey, legal counsel; Christina Case, committee clerk. I made her counsel last week but she's clerk again this week. Senator Christensen obviously you all know from Imperial, and many of you have testified before so welcome back. And with that, Senator Christensen, would you like to introduce LR430. [LR430]

SENATOR CHRISTENSEN: (Exhibits 1 and 2) Thank you, Mr. Chairman. Members of Judiciary Committee, I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LR430, an interim study to discuss the castle doctrine and Nebraska's self-defense laws. I would first like to thank the committee for taking time to examine closer this issue and to continue the discussion from last session. Last session I introduced LB889 to begin discussions of Nebraska's

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self-defense laws. The bill would have amended several existing sections; repealed two sections; defined "forcible felony," giving the actor using force a presumption that his or her use of force was reasonable in certain situations; and protected an actor from civil action for legal justification use of force. This committee had several questions regarding these changes in LB889 and ultimately decided to focus its attention on other bills during the short session. One portion of the bill that seemed to have the most interest or support was Section 28-1416, Section 11 of the bill. I pursued the possibilities of amending this section into another bill but decided to introduce a study instead. This section abolished any civil...sorry. This abolished any remedy in civil action when the protective force used by an actor was justified under the law. It is my desire to examine this further in hopes to construct similar protections that other states provide their residents. It is my intent, by introducing LR430, that we could continue the discussions of Nebraska's self-defense laws. Many constituents still want to see changes that fall in line with the castle doctrine philosophy to make sure our statutes do not infringe upon the right to self-defense, guaranteed in Article I, Section 1 of the Nebraska Constitution. Today I've brought some handouts regarding the number of states with castle doctrine laws, examples of no retreat states, states that provide criminal and civil immunity to those acting justly in self-defense, states with presumption language, and other examples for a definition of "forcible felony." Thank you and for your time for considering examination of self-defense laws. Also I might mention that since we moved this study from, like, McCook here, I wasn't able... [LR430]

SENATOR ASHFORD: That wasn't meant to be personal to McCook at all. [LR430]

SENATOR CHRISTENSEN: No. No, I understand. [LR430]

SENATOR ASHFORD: Okay. Yeah. [LR430]

SENATOR CHRISTENSEN: But I wasn't able to get...I had three sheriffs, I think, all of you have letters hopefully shortly from them. I'm going to get back in touch. We

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e-mailed them, didn't get them anyway. And another police department that...a city police department that said they supported the castle doctrine and thought it had no detrimental effects on them. I'll try and get them letters to you guys when I get them, but that was one of the reasons why originally I tried to have it in western Nebraska, because I think there is a little different perception in the western side versus the eastern side on this doctrine. So be glad to take questions. [LR430]

SENATOR ASHFORD: Thank you, Senator Christensen. Any questions of Mark? Thank you. Thanks for getting us the material. Jordan. [LR430]

JORDAN AUSTIN: Good afternoon, Mr. Chairman, members of the committee. I want to thank you for the opportunity to hold this hearing today and to speak before you. My name is Jordan Austin, J-o-r-d-a-n, last name Austin, A-u-s-t-i-n. I'm here on behalf of the National Rifle Association. Like the senator said, we've discussed this issue before per legislation that was introduced last year by the senator. We were supportive of that legislation then and we are supportive still of the need to make improvement in the self-defense statutes in the state of Nebraska here. What we, at least from...the purpose of this interim study is to discuss the self-defense statutes here in the state and surrounding states and how, you know, or why improvements would need to be made. What we believe as far as self-defense statutes is we're lacking in several things here. One of those is there's no protection from civil liability, as the senator mentioned. We need to provide protection for individuals so that when they use self-defense, as was granted to most of them by the concealed carry legislation that was passed several years ago, many people in this state now are exercising that right to carry concealed firearms and, if they happen to use self-defense, they need to have some sort of knowledge or comfort that if they use that self-defense or exercise that right then they will have protection from either the individual they injure or the family members who might, you know, seek legal action or recourse against them for the actions they took against their family member. So there are many states that have these civil liability protections. Currently, I believe as of the end of this last legislative session of 2010 we

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have I believe 19 states that have civil and/or criminal immunity protection for individuals who exercise their self-defense rights. We feel it's a very important aspect of all castle doctrine legislation. One should not be worried about civil action when they're having to make a life or death decision based on the welfare of themselves, family members, or even individuals who are at harm they encounter when out in public. You should not have to worry. You know, you really are taking matters into your own hands at that point when you're exercising that right. When you're attacked by someone, you're in fear for your life, you shouldn't have to worry about being sued but you also shouldn't have a duty to retreat and you shouldn't have to worry about fleeing from a situation, and that is another flaw we see in the current statute. There exists a duty to retreat in statute and we feel it's necessary to repeal that. What that does, it makes this a stand-your-ground state and as of, like I mentioned before, the last 2010 Session, there are 20 states that have no duty to retreat. And in total, as far as self-defense castle doctrine laws, there are over 25 states, including Pennsylvania, which makes 26 as of yesterday, who have NRA-supported castle doctrine laws. I think those are the two main points that we want to cover as far as eliminating the stand your ground and providing civil immunity. When the legislation was presented last session, Senator Council here on the committee pointed out several...what she saw as an error in some sort of wording of the statute based on the presumption we had in there. We feel the presumption is a very beneficial aspect of the legislation and we've taken steps, since she brought that forward, to address that problem she saw and make corrections there. So we're looking forward to the opportunity, when we create a new draft, to address some of those concerns that were brought forward by the committee so we have a bill that everyone is comfortable with, that doesn't leave any loopholes or gaps in there where it could be exploited or unnecessary violence could take place. One more point I would like to make is that there exists no specific protections in one's home in Nebraska statute, and the essence of the castle doctrine is protection within your home and I think that's an important aspect we need to address, is that we need the specific protections that discuss what your rights are within your home in relation to what your rights are when you're outside your home, in your vehicle, or any place you have a legal right to

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be. We feel the specific rights within your home are very important to be outlined very clearly in statute. I made this point at the first hearing and I only briefly make it again, was that the current statute is very confusing to read. It's very detailed. It's very long. It's spread out over several sections which makes it difficult for the ordinary person to understand. If it could be condensed, consolidated, refined, and reformed, that's what we're looking for is the ability for the Nebraska citizen to be able to understand what their rights are clearly and enhance those so that they have comfort in exercising their right of self-defense without fear of criminal or civil prosecution. With that, I will cut things short and be happy to take any questions from the committee, they might have for me. [LR430]

SENATOR ASHFORD: The only...and I only have one question and maybe it's obvious and so I apologize. But if an individual is out in, let's say, a political rally or some sort of rally, and we saw so much of that this election season and heated, you know, discussions and arguments and yelling and screaming on all sides and people getting mad at each other, which is part of free speech and I understand all that. But if in that context there were, at least in the press, there were episodes of violence that occurred, mainly just fisticuffs or some other kind of activity, you know, in that kind of a scenario where someone feels threatened by that kind of an environment where they're attacked physically, for example, in that kind of a highly charged, political event, what do these laws generally say about that? Can that, you know, person that's being attacked use a firearm, for example, to defend himself or am I just...? [LR430]

JORDAN AUSTIN: Well, in a general sense, the way you're speaking, if we're talking about a specific situation we can get more detailed in that. [LR430]

SENATOR ASHFORD: And this is a general comment. [LR430]

JORDAN AUSTIN: Yeah. In a general sense, if someone is attacked any place they have a legal right to be and they are in fear for their life, serious death or bodily harm I

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believe is the terminology we like to use, then at that point you can meet force with force, including deadly force. So only if there is a threat that you see as a serious threat of bodily harm, but what you have to look at, at the same time, is if you're... [LR430]

SENATOR ASHFORD: But who, to that point, who is...and that's maybe the crux of my concern, is who...what is evidence of that? Then the victim testifies or the perpetrator, I guess in that case if they used deadly force: I was in imminent fear of great bodily harm, I was being attacked verbally and that verbal attack was...I felt was moving towards...and there were...maybe the person exhibited some sort of other force like had a club or something else or something that could have been used as a weapon. Is that the evidence of "reasonably believed" or is that...what sort of evidence meets that standard? [LR430]

JORDAN AUSTIN: Well, it varies. I mean there's various case law throughout the country that talks about these different cases. Obviously, if someone...a verbal argument turns into a pushing, shoving, which turns into someone brandishing some sort of weapon, at that point it's reasonable to believe that that person intends to do you bodily harm. They're not going to brandish any sort of firearm or weapon like that, billy club, brass knuckles, what have you, unless they intend to do bodily harm to you. Maybe it was some sort of threat to bodily harm. They're trying to...I guess I'm not trying to speak on behalf of someone who would do that, but maybe they're trying to elevate the threat level to alleviate the situation. But, you know, at that point what they're doing is they're instigating raising the level of threat and, you know, the other individual has the opportunity, if they have a firearm on them, to escalate the level again. [LR430]

SENATOR ASHFORD: That's not good, though, is it? I mean...(laugh) [LR430]

JORDAN AUSTIN: Well, I'm not saying that could happen. We're just speaking in general terms. [LR430]

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SENATOR ASHFORD: Yeah. [LR430]

JORDAN AUSTIN: That could be what happens in a situation like that. [LR430]

SENATOR ASHFORD: That hypothetically could happen. [LR430]

JORDAN AUSTIN: Hypothetically, exactly. But this is not a good situation to speak in hypotheticals because many states have taken it upon themselves to recognize this right. And back, you know, several years ago, by acknowledging and allowing people to get a concealed carry permit, you're recognizing that they're going to be able at some point to use this right for self-defense. You know, we've granted them that permission to use a firearm for self-defense. [LR430]

SENATOR ASHFORD: What if they don't have a concealed weapon permit though? I mean I grant you that, a concealed weapon permitholder is someone who's been trained and... [LR430]

JORDAN AUSTIN: Uh-huh. [LR430]

SENATOR ASHFORD: ...but if this is just someone who has access to a firearm, hasn't been trained, feels in danger, doesn't have the duty to retreat, is in a highly charged...my example is, and it's maybe not a great one, but a highly charged political event where people are yelling at each other on both sides of some issue... [LR430]

JORDAN AUSTIN: Yeah. [LR430]

SENATOR ASHFORD: ...and, you know, and they're not...and they don't have the duty to retreat anymore and someone comes at them with a weapon, they can then theoretic...and I realize the facts have to meet the case, but theoretically they could use force beyond the force that's being exhibited. [LR430]

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JORDAN AUSTIN: Well, chances are...and I know, you know, Chris Zeeb, who's behind me, will probably speak to this because he's an instructor and he teaches folks in self-defense and training and things. [LR430]

SENATOR ASHFORD: Okay. [LR430]

JORDAN AUSTIN: When you've been trained and even...and you mentioned people who haven't been trained, but if there's a crowd of people around, there's a pretty good chance that someone, if they are, you know, in possession of a firearm, they're not going to escalate the situation to a point where they're going to start randomly firing into a crowd of people, you know? They're not. If someone is in possession of a firearm, they've taken their responsibility upon themselves to arm themselves for their own personal protection. They're not there for any sort of violence or criminal acts. They're arming themselves for their own personal protection, so they're not going to risk or jeopardize their own personal freedom or safety by committing a violent act that could possibly endanger other people. So, you know, response... [LR430]

SENATOR ASHFORD: Well, that's the best case scenario. Hopefully, that's why they're there. [LR430]

JORDAN AUSTIN: Exactly. And those are the people we're talking about, responsible individuals and responsible gun owners who we're trying to protect with this. There's always going to be, you know, people who make... [LR430]

SENATOR ASHFORD: And theoretically, if they have a firearm at such an event and they're concealing that firearm, they have a permit to do so. If they're not, if they don't have a permit, they're violating the law anyway. [LR430]

JORDAN AUSTIN: Well, there's open carry laws that, you know,... [LR430]

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SENATOR ASHFORD: No, not open carry... [LR430]

JORDAN AUSTIN: Yeah. [LR430]

SENATOR ASHFORD: ...but if someone has concealed a weapon and they don't have a permit to do that, then they're violating. [LR430]

JORDAN AUSTIN: But what we've seen this past election cycle has been many expressions of open carry rallies that have not had any sort of violent acts at all. We've seen that more and more throughout the country. Wisconsin is a state I work in. I know I mention that sometimes in my hearings here. They don't have concealed carry laws in that state. It's still prohibited. It's one of the only two states left and they have had many open carry rallies there and there's been no violent outbreaks or anything so to speak of. So people can have political conversations, they can have heated conversations where violence won't necessarily break out and they're... [LR430]

SENATOR ASHFORD: And I'm not connecting...and I'll stop here... [LR430]

JORDAN AUSTIN: Yeah. [LR430]

SENATOR ASHFORD: ...because I don't want to prolong this. I'm not connecting, I don't want my question to imply I'm connecting the fact that someone is carrying a gun, that that he or she is prone to violence. That's not my question. [LR430]

JORDAN AUSTIN: Okay. [LR430]

SENATOR ASHFORD: My question is more about what is the law that you're proposing. I'm not suggesting that just the act of carrying the gun somehow makes that person more dangerous. I'm not making that...I'm not implying that. [LR430]

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JORDAN AUSTIN: Okay. Well, what...to answer your question then directly would be that if someone feels their life is threatened, if someone is in an argument and someone escalates that situation with some sort of violent weapon, you know, whether it be any sort of thing you mentioned, billy club, what have you, then we want that other person to be able to defend themselves. Now if you provoke a situation, and that's outlined in statute, in the bill, if you're the provoker of that situation then you're not entitled to a self-defense claim. But if you provoke a situation and then that person escalates it to a point where...and I'm getting ahead of myself. Yeah, if you're the "provokee" then you are not entitled for that self-defense. But if you are engaged in a conversation with someone and they escalate the situation and you see that as a serious threat to death or bodily harm, then that is what we want to do. We want to provide those people with the right to make the decision, what force is necessary for them to protect themselves from death or great bodily harm. [LR430]

SENATOR ASHFORD: Okay. Thanks, Jordan. [LR430]

JORDAN AUSTIN: Sure. [LR430]

SENATOR COUNCIL: I have a question. [LR430]

SENATOR ASHFORD: Yes, Senator Council. [LR430]

SENATOR COUNCIL: Yes. Thank you, Mr. Austin. Just following up on that last point, let me make sure I understood what you just said, that if two individuals are engaged in a conversation and one person is the person who instigates the conversation or initiates the argument and the other person retaliates in some form that then puts the initiator in fear of serious bodily injury, did you just say that then the person who initiated that will have all of the protections of self-defense in that situation? [LR430]

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JORDAN AUSTIN: No. [LR430]

SENATOR COUNCIL: Okay. I just wanted to be sure I was clear on that because I'm looking at some of the statutes that have been distributed and several of them make a point of exempting or excluding from protection, as well as providing a duty to retreat under circumstances where someone instigates. I think I'm looking at Utah here. A person is not justified in using force under the circumstances specified if he or she was the aggressor or was engaged in combat by agreement unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force. So essentially, in that situation at least the Utah statute imposes a duty to retreat. [LR430]

JORDAN AUSTIN: Well, that was a point I was going to make. Without having the statute in front of me, and other ones at my disposal, that's a more clear expression of exactly what you want the situation to be. Now it doesn't consist (inaudible) active duty to retreat, but at some point if you have what we're talking about here, is a situation where two people are arguing and one person instigates, you know, verbal or makes some sort of threat and says, well, then I don't agree with you, I'm going to punch you in the face, and the other person says, oh yeah, well, then I'm going to take these brass knuckles out and really mess your face up, that person has turned the aggression on the other person. So the only way for that person to exercise any sort of self-defense right would be to temporarily withdraw themselves and say, whoa, that's not what I want to do, I don't want to take it to that level. They have basically set...they're laying out an argument or a foundation to say, I'm withdrawing from the situation of my own accord. If that person continues to engage them, then at that point they have to make a decision whether or not they are still facing that imminent threat of great bodily harm. They have...while they were the aggressor initially, they withdrew temporarily to, I guess you say, level the playing field so that they would have the ability to exercise some sort of self-defense right. If they continue to be the aggressor in that situation, they escalate it

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and they counter back and said, well, yeah, then I'm going to do this, that's a continuing escalation of aggression. So the individual would have to somehow withdraw temporarily, not as far as running but just verbally communicate some sort of backing away and trying to de-escalate the aggression. [LR430]

SENATOR ASHFORD: There has to be an intervening...some sort of intervening act on the part of the initial aggressor that... [LR430]

JORDAN AUSTIN: Correct, if that's the Utah language. Utah has, from what I gather, a pretty good self-defense statute and if that's the verbiage, that sounds like good verbiage we could incorporate to make sure that situation is very clearly articulated. I mean that's an important point to make and I think it needs to be addressed clearly so that someone knows in that situation how and when and why they would be able to, if they come across that circumstance. They know what they need to do to be able to still exercise their constitutional right. [LR430]

SENATOR COUNCIL: But doesn't this impose some kind of...well, it's not some kind, it imposes some subjective determination: effectively communicate to the other person his intent to do so. Who determines whether they effectively communicated? [LR430]

JORDAN AUSTIN: Well, I guess it... [LR430]

SENATOR COUNCIL: And how do you determine whether someone effectively communicates? [LR430]

JORDAN AUSTIN: I guess it would be a simple...I mean one has to look at case law in various situations where this has occurred in order to accurately give scenarios. But based on that, I mean, I think it would be something similar to what I said would be, you know, you...if someone, you know, brings a weapon to the, you know, what would be an argument then one would obviously naturally probably take a step back and say, wait a

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second, that's not...wasn't what we're doing; we're arguing here, you know, and I might have just said something I didn't mean and I would like to take that back. You know, obviously there's things people can say and do and actions can be made that can, you know, clearly demonstrate that they do not wish to continue any sort of aggression. You know, I think if we were to look at, you know, any sort of case law there would be clear examples of that, that we could, you know, provide. [LR430]

SENATOR COUNCIL: Well, looking at...and you indicated that 19 states have immunity from criminal and civil liability. [LR430]

JORDAN AUSTIN: Correct. [LR430]

SENATOR COUNCIL: So the majority of states don't have it. [LR430]

JORDAN AUSTIN: As far as ones that they've passed, these would be ones...I have the list right here with me. Let me take a glance. Yeah, all of these have...these are all states that have been passed within the past, since 2004 I believe is the earliest one I have in here. That would be since that time period. So that doesn't include, and I believe this is the case, states that already have that within statute. These are states that I believe have passed this since the castle doctrine was first passed in Florida in I believe it was 2004, 2005, if I'm not mistaken. Let me look, 2005. [LR430]

SENATOR COUNCIL: So the answer to my question is you don't know. [LR430]

JORDAN AUSTIN: I can tell you for certain that 19 states have it as of 2005, and as far as the rest of them, they either already have it in statute or do not have it in statute. [LR430]

SENATOR COUNCIL: Okay. Well, it would be important to know if 31 states don't have it in statute, so, you know, we would need to certainly consider that. I guess is that the

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same for the 30 states who have...apparently have a duty to retreat? [LR430]

JORDAN AUSTIN: What I'll say then, and I will provide you with the exact figures after this hearing is over, but as far as what I have in front of me that I know for sure, I will stick to my original statement which is 25 states have NRA-supported self-defense statutes, 19 offer criminal and civil immunity, and 20 are stand-your-ground states, and those are assurances. As to the rest of the states, I will get you a definitive answer sometime later today as far as what they have. [LR430]

SENATOR ASHFORD: And I'll let you go, Jordan, but I just...the last...one of my concerns is doing more than we need to do, and under Nebraska statute, I think we talked about it last time, is that there are ways that that statute can be amended within its own context that would address some of these issues. The other concern, though, that I've always had with this, outside the home or in the workplace type situation, is the potential injury to others. I mean you're going to have, if shots are fired in a crowded area, if someone has been an aggressor, and let's just assume they are an aggressor, they are coming at somebody in a manner that would...anyone would judge to be aggressive, I'm assuming they wouldn't have to have a weapon. If they're very aggressive, they come after you and you're in fear of grave bodily harm, you have at least the statutory defense in statute and you could use a firearm to defend yourself or defend yourself generally. But if you had a firearm, use a firearm, there is the countervailing public concern that what about the...you know, when you balance that, the potential injury to others, as we've seen in some of these workplace situations where someone has used a firearm, they've gone off, they've had terrible, difficult mental issues or whatever the issue is, but they have access to a firearm and then...and maybe that's not an aggressor situation. But again, my concern is when you get outside the home or a confined area where you have the right to be and into the general public and shots are fired and the other person doesn't have a firearm, you know, and someone else is injured or killed, then you start getting into those issues as well. And how do you protect the public in that kind of a situation? [LR430]

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JORDAN AUSTIN: I could address that very quickly, and this goes back to what Senator Council was saying when she asked about the number of states that have these sort of protections. What we also have is we have protections that were issued by each...by 48 states regarding concealed carry laws. All those states have recognized that people are going to exercise self-defense through carrying firearms and you don't have situations. I mean we haven't seen it. That's the general premise of allowing for concealed carry and people exercising self-defense is that we don't have those situations. We always oppose limitations on workplaces and things like that because of the situation you just mentioned where someone comes in there armed and angry. [LR430]

SENATOR ASHFORD: Right, I understand that is defending. I get that. [LR430]

JORDAN AUSTIN: Exactly. So what you have is when you allow for self-defense and you allow for self-defense in the workplace and someone to clearly know what their rights are, then you don't have someone who would...that situation would not exist because one wouldn't know who in their workplace would be armed and that person has no fear from prosecution from that individual's family. [LR430]

SENATOR ASHFORD: I understand where you're going and I'm trying to think about the balancing, you know, what rises to the level of...to justify using deadly force, in effect, using a firearm to protect one's self or family. That's the part that I think...there may not be enough words in the English language to write it every... [LR430]

JORDAN AUSTIN: Well, we think we've accomplished it and... [LR430]

SENATOR ASHFORD: So we might have to go into French or something to do it but... [LR430]

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JORDAN AUSTIN: ...and the most recent castle doctrine we've worked on is right just south of you guys in Kansas. We refined it based on some of the things pointed out by Senator Council here last year as far as... [LR430]

SENATOR ASHFORD: Right. [LR430]

JORDAN AUSTIN: ...someone fleeing a home and what your rights are there. [LR430]

SENATOR ASHFORD: Right. [LR430]

JORDAN AUSTIN: We tweaked the language there. We mentioned a case that was brought forward which talked about threats of force. We've very well refined their state self-defense law and that's one I would like to incorporate and somehow adapt when we look at this in depth. We think we have the tightest, soundest language that would give you very specific, very specific details as far as what your rights are, when you can do it, when the situation is, what rises to the level. We think we've accomplished what would be a very airtight, self-defense statute that reads clearly to individuals but also provides efficient protection, without going outside. [LR430]

SENATOR ASHFORD: Well, and you want to be able to protect an individual who is the victim of an aggression and... [LR430]

JORDAN AUSTIN: Correct. [LR430]

SENATOR ASHFORD: ...and you want them to be able to use a firearm to protect themselves or their family. I get that and I...you know, but it's some of the residual issues that we have to think about. But I understand. [LR430]

JORDAN AUSTIN: Yeah, it's not limited to just firearms. [LR430]

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SENATOR ASHFORD: I understand what you're saying. [LR430]

JORDAN AUSTIN: We're talking about, you know, deadly force as far as what they can do. [LR430]

SENATOR ASHFORD: Yeah, I understand that, but the NRA's issue is you don't want people necessarily prosecuted for using a firearm to protect themselves. I understand that's your interest. I don't think that's an unreasonable interest. I'm just saying that, you know, I get it. So anyway, thanks, Jordan. [LR430]

JORDAN AUSTIN: Happily. And I will, Senator Council, I'll work on getting a definitive answer for you and provide that for you. And if anyone would like me to provide them copies of the sample language I'm talking about we worked on in Kansas, I'd be happy to provide that to you as well. [LR430]

SENATOR ASHFORD: I think we have...Senator Christensen has given us most of that, so... [LR430]

JORDAN AUSTIN: Oh, fantastic. [LR430]

SENATOR ASHFORD: Okay. [LR430]

CHRIS ZEEB: (Exhibit 3) Good afternoon, members of the committee, or good morning, whatever it is yet. My name is Chris Zeeb, C-h-r-i-s Z-e-e-b, here representing the Nebraska Firearms Owners Association. I think our organization would like to see just a few simple things done to the Nebraska self-defense laws to strengthen them. I think, all in all, we have pretty good self-defense laws. I am also a self-defense concealed carry instructor, so I teach this and I live this often. A couple of things that we think needs to be addressed, first of all, number one there on the handout I'm giving you, a person who lawfully uses deadly force to protect themselves or another person should be released

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from civil liability. Nebraska statute 28-1416 unfortunately clearly states they're not released of it, even though they were justified under law in using the force. It's clearly, you know, it's not right that a criminal who was threatening or attempting death or serious bodily injury can still take a civil action against the person who lawfully used force to protect them to stop that heinous felony crime. Number two, duty to retreat by a person where they have a legal right to be, I teach and will continue to teach, even if the law is someday changed, retreating is your best option. You have nothing to win and everything to lose by using deadly force. However, if someone has to use deadly force, what's the first thing the prosecutor and the jury are going to play on? It's going to be, did you have an opportunity to retreat? Why didn't you retreat? And now that person, they're second-guessing that decision they had only one or two or three seconds to make, where the prosecutor and the jury has all the time they want to hang them out there. Number three, a presumption should be established in the law, if someone is breaking into your home, it should be presumed they are there to cause death or serious bodily injury to you. It is unreasonable to wait until deadly force is employed or threatened, as is currently required under Nebraska statute 28-1411(6). I do want to address a couple of things that were discussed in the discussion with Jordan. Senator Ashford, first of all, at a political rally a concealed carry permitholder can't carry, so they wouldn't be there. Senator Council, you had addressed a Utah statute. I am certified by the state of Utah, Bureau of Criminal Identification, to... [LR430]

SENATOR ASHFORD: But they could carry. I get your point. That's a good point. But they could carry a weapon not concealed, could they not? Is there a rule somewhere that says... [LR430]

CHRIS ZEEB: I don't know if...I wouldn't recommend a concealed carry permitholder do that. (Laugh) [LR430]

SENATOR ASHFORD: No, no, I mean I don't know. I get your point. Go ahead. [LR430]

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CHRIS ZEEB: Yeah. I am certified by the state of Utah and I do teach their concealed firearm permit course and I'm very familiar with their laws. A person in the state of Utah...and I apologize. I printed off all my Nebraska statutes, didn't think we'd be talking Utah today so I don't know the exact statute number. But the law says a person does not have a duty to retreat in a place where they have lawfully entered or remained, and that I think was kind of being confused with the situation of them being the initial aggressor. And you read the language from that statute. But in the state of Utah, there is no duty to retreat. [LR430]

SENATOR COUNCIL: And if I may, I'll repeat myself. My statement was, isn't it implied from that language that in that situation there is an implied duty to retreat if you can't use self-defense? And the Utah law speaks to not only being the aggressor but if it was mutual agreed upon combat that escalated and one person decides, hey, I'm getting my butt kicked here, I'm getting out of it, that's the only way that that person would have protection. So it's an implied duty to retreat in that situation if they... [LR430]

CHRIS ZEEB: Sure, if they are the aggressor. [LR430]

SENATOR COUNCIL: Or in a mutual combat. That's what the law says. I mean if two people just started a fight and one of them says, you know, I'm getting the best of it, man, I quit; and the other person continues. Then the person who said, I quit, under Utah law, would then have the right to use deadly force. [LR430]

CHRIS ZEEB: Correct. [LR430]

SENATOR COUNCIL: But if he didn't say, I quit, and tried to remove himself or herself from that situation, then they wouldn't have any protection. So my statement was, that's an implied duty to retreat in order to exercise deadly force. You have to, as the law states, you have to effectively communicate that you want the situation to stop before you then have the protection of using deadly force. So that's kind of an implied duty to

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retreat. [LR430]

CHRIS ZEEB: Sure, in a mutual fight, in that... [LR430]

SENATOR COUNCIL: Right. [LR430]

CHRIS ZEEB: ...in that one situation. Okay. But it... [LR430]

SENATOR COUNCIL: Yeah, and that's...and the law makes...they could have just said what some of these other statutes say, which speaks to you having been the aggressor. But the Utah law specifically says you were the aggressor or you were involved in mutual combat that, in order for you to use deadly force, whether you were the aggressor or you were engaged in mutual combat, in order for you to use deadly force, you would have had to have said, I quit, you know, I want this to stop. [LR430]

CHRIS ZEEB: Correct. Correct. But under most...and that's in a combat by mutual agreement, is what that law says. [LR430]

SENATOR COUNCIL: Uh-huh, right. [LR430]

CHRIS ZEEB: In most situations is what we're talking about here. If you're car-jacked in the state of Nebraska, under the law you have a duty to retreat if you can do so with complete safety. In Utah law, you have no duty to retreat in that situation. You're not an aggressor. You are not mutually agreeing to a fight. If someone is attempting to sexually assault someone else, you have no duty to retreat, or sexually assault you, the armed person, you have no duty to retreat. In Nebraska law, it says you have a duty to retreat if you can do so with complete safety. And that come... [LR430]

SENATOR ASHFORD: With complete safety. [LR430]

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CHRIS ZEEB: Yeah, with complete safety. Well, that sounds good here but you know it's going to be called into question when they get charged, when you have a zealous prosecutor who wants to take the case to court because it was a shooting. And that's... [LR430]

SENATOR COUNCIL: Well, the same point, the point I just made about effectively communicating that you want to quit, you're going to have the same situation. A zealous prosecutor makes the argument you didn't effectively communicate, I mean, and that's the point I'm talking about. I mean there's subjectivity. I don't care in which... [LR430]

CHRIS ZEEB: But you're not required to communicate if you are car-jacked or if you are sexually assaulted. [LR430]

SENATOR COUNCIL: That's not the point I'm making. If you're going to make the argument that in those cases, under duty to retreat, there's going to be some subjectivity, then in several of these statutes that you're offering as examples you're going to have that same level of subjectivity. Who decides whether I effectively communicated? The zealous prosecutor? [LR430]

CHRIS ZEEB: Sure. Sure. [LR430]

SENATOR COUNCIL: And the same holds true with any of these levels. I mean the question is always going to be, except in the rare cases where you may have, you know, corroborating witnesses, it's subjective whether I feel that I'm being...there's a threat of bodily injury or serious bodily injury or death. I mean that's...it's subjective. You know, some people will, some people won't. And I'll tell you, you know, point blank, one of the problems I have with the bill that was introduced this past session is the level to which it was presumed that a reasonable person would be threatened. And if you read that bill as it was introduced, it specifically, I recall, and I don't have it in front of me, that a person could use deadly force if they came home and discovered that their home had

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been burglarized and looked out the window and saw someone walking through their yard; that under those circumstances that person was authorized to use deadly force. There was also the situation, it's 2:00 in the morning and somebody is bawling on my door. Under the bill that was introduced last session, that would authorize that homeowner, without determining, you know, whether it's a stranded motorist or, you know, a kid who just escaped from somebody who was trying to snatch them, that they would be authorized to use deadly force. I have problems with that when in that situation that homeowner, who comes home, finds that their home has been burglarized, certainly has a right to remain in their home but does...is it reasonable for a person who, at that point in time there's no one in the home and rather than calling 911 and having the authorities come, searched the perimeter, sees someone walking through their yard and can use deadly force? [LR430]

CHRIS ZEEB: Senator Council, you make some very valid points and I'm not here saying let's relive that last bill. I'm asking for three simple changes to the laws here today. That bill, as well as our self-defense laws, are incredibly difficult to understand. When I first started teaching concealed carry, I went to two different attorneys and threw these laws down and said, can you please explain to me what this says? [LR430]

SENATOR ASHFORD: And I think we're all having the same problem because we're trying to...there are millions of situations that can occur out there where someone is an aggressor and it's hard, you know, to find the words. And just like...and I respect what you're trying to do is teach people what to do when they're placed in that situation. You know, what are the risks? Are you going to be prosecuted for using a firearm for protecting your family? That's a tough job for you to have and if the laws aren't clear, I get it. I just...finding the right words and the right circumstances to covering the law is a challenge. [LR430]

CHRIS ZEEB: Sure. [LR430]

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SENATOR ASHFORD: That's all, I think. So anyway... [LR430]

CHRIS ZEEB: I want to address one other thing that you brought up, Senator Ashford, and that was being out in public in a group of people. That is covered under 28-1414. If someone recklessly or negligently... [LR430]

SENATOR ASHFORD: Right. [LR430]

CHRIS ZEEB: ...injures or creates the risk of injury to innocent people, they have no self-defense justification under those prior sections. [LR430]

SENATOR ASHFORD: But it's probably not going to be reckless if you're defending yourself. I don't know. I mean... [LR430]

CHRIS ZEEB: Well,... [LR430]

SENATOR ASHFORD: ...each case is different. [LR430]

CHRIS ZEEB: Every case is different. I can tell you there was a case in Omaha five years ago where a tobacco store owner was absolutely reckless in using self-defense and he got his unarmed clerk killed. [LR430]

SENATOR ASHFORD: I remember. [LR430]

CHRIS ZEEB: And he had no justification for using deadly force and he wasn't even prosecuted. [LR430]

SENATOR ASHFORD: No. I remember when that happened. No, I get... [LR430]

CHRIS ZEEB: You know, and... [LR430]

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SENATOR ASHFORD: And from your perspective, and I, you know, putting myself in your position, I get exactly what you're talking about. How can you give somebody a clear instruction on what to do if it's not clear? I understand that. I get it. [LR430]

CHRIS ZEEB: Sure. [LR430]

SENATOR ASHFORD: Thanks. [LR430]

CHRIS ZEEB: All right. [LR430]

SENATOR ASHFORD: Next testifier? Senator Christensen, do you wish to...? [LR430]

SENATOR CHRISTENSEN: No, I guess I'm done, unless people would like to ask me questions. [LR430]

SENATOR ASHFORD: No, I think this is helpful and I think your...anybody that takes the time to do what you do to make the, you know, your community a safer place, you know, you ought to be commended for doing that. And I'm not sure what we can do to help you but we'll certainly look at it. So thanks. Thanks for coming. [LR430]