

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2013

[LB374 LB379 LB441 LB455 LB615]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 27, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB379, LB374, LB615, LB455, and LB441. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: The other members will be coming, I'm sure. We have five bills today starting with LB379 with Senator Nelson. Those of you who have been here before, many of you have been, we have a little system of lights that provide a time for your comments of three minutes, and we would ask you to confine your comments to three minutes. There is a yellow light that will go on to indicate that it's time to sum up. If by some chance you're still speaking when the red light goes on, you're ejected with some force. Not you, Mayor Suttle, of course, but everybody else. (Laugh) Let me introduce my colleagues. Senator Seiler is our senator from Hastings; Senator Lathrop from Omaha; and Senator McGill is from Lincoln; Senator Chambers is from Omaha. And LaMont Rainey, to my right, is our legal counsel; and Oliver VanDervoort is the committee clerk. I think that pretty well covers it. How many testifiers do we have on LB379? Okay. John, would you like to introduce LB379? Welcome. I think this is your first visit this year.

SENATOR NELSON: Yes, it is, in several years, Mr. Chairman. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Senator John Nelson, spelled N-e-l-s-o-n, and I represent District 6 in mid Omaha. I'm here today to introduce LB379. As most of you probably know, last fall a prisoner at the Nebraska Department of Correctional Services was shot and killed by police officers who were responding to a gang-related gun fight in Omaha. This prisoner had served jail time on nearly a dozen previous occasions and was in the middle of a prison term for being a felon in possession of a gun, but he was out on a two-day furlough at the time he died. The Omaha Police had not received any notice of his release. Since that incident, Mr. Bob Houston, the director of the Department of Correctional Services has worked diligently with the Omaha chief of police to put in place new limits on the furlough program and to provide notice to requesting law enforcement agencies of prisoners on furlough in their jurisdiction. While these internal changes are welcome, Nebraska law currently has little to say about furlough eligibility and law enforcement notification. It also sets few limits on our state's good-time policy, which allows violent criminals to gain early release long before the end of their prison terms. I believe the safety of our communities and our prisoners require us as legislators to take action at this time. LB379 is critical for the public safety of Nebraska. First, the bill requires that chiefs of police in Omaha and Lincoln be notified whenever a person convicted of a Class 1A felony or first-degree sexual assault is released on furlough in those jurisdictions.

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Additionally, the Nebraska Sheriffs Association has requested that the sheriffs departments of Lancaster and Douglas Counties also receive this mandatory notification, and I would recommend that they be incorporated in this section by amendment. Secondly, LB379 eliminates furlough eligibility for some of our most violent criminals. Currently, only death row inmates and those serving life sentences for first-degree murder do not qualify for furloughs. But gun violence and gang activity continue to plague Nebraska, and Omaha in particular. For that reason, LB379 eliminates furlough eligibility for habitual criminals--in other words, those with at least three felony convictions; for persons convicted of use of a deadly weapon to commit a felony; and for persons convicted of possession of a weapon by a prohibited person. I acknowledge that the furlough program exists to help prisoners who are near the end of their sentences to better adjust to the community by reuniting with family members and finding employment, which can ultimately facilitate stability and long-term public safety. However, these particular classes of prisoners should not be out on furlough years before the end of their terms. At most, we could allow furlough eligibility to begin 3 to 6 months before final release; and I would be willing to work with the committee on that going forward. Finally, LB379 eliminates good-time eligibility for the aforementioned three classes of prisoners. Currently, Nebraska law requires maximum sentences to be cut in half for prisoners in the Department of Correctional Services, but the state good-time law also allows violent offenders to return to their communities long before the end of their sentences. Therefore, LB379 requires what is known as truth in sentencing for these three classes. A sentence of two to four years should mean two to four years, and not one to two years under our good-time law. I do understand that eliminating the good-time law in this circumstance could significantly increase the effective prison time for these inmates who currently number about 650 of the department's 4,600 total prisoners. This could require the construction of another expensive prison that we may not be able to afford, but it's worth noting the changes to our good-time law are not, per se, retroactive but apply to current prisoners only at the discretion of the Board of Pardons, so we should take a close look at the actual costs before dismissing this proposal out of hand. In closing, I applaud Director Houston for taking the initiative to establish some new limits on a furlough program at the Department of Correctional Services. However, Nebraska law must set minimum standards for the early release of prisoners convicted of violent crimes; so I urge you to take action on this bill for the security of our communities and the safety of our citizens. This concludes my opening and I am willing to address any questions that members of the committee may have. [LB379]

SENATOR ASHFORD: Just a brief comment. You're aware of LB63, John. You were here when Mike Friend and I... [LB379]

SENATOR NELSON: Yes, I remember that. [LB379]

SENATOR ASHFORD: ...worked on that bill, and you may...were you...you had some

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amendments on that too. Were you involved in LB63? [LB379]

SENATOR NELSON: No, I was not. Not that I recall. [LB379]

SENATOR ASHFORD: But you know, your comments about someone who has committed a violent crime with a firearm could get out in half the minimum sentence would not apply, would it, to those cases where there's a mandatory minimum sentence? So if, let's say, it's a five-year mandatory minimum for a particular use of a firearm crime and they would have to serve their mandatory minimum sentence before... [LB379]

SENATOR NELSON: That's my understanding that they have to... [LB379]

SENATOR ASHFORD: Okay. So I think what you said...and I'm not squabbling. [LB379]

SENATOR NELSON: All right. [LB379]

SENATOR ASHFORD: But what I think you mentioned that they would get out in half their minimum or...but that would not apply if there was a mandatory minimum, I think. [LB379]

SENATOR NELSON: I agree with that. [LB379]

SENATOR ASHFORD: Okay. Does anyone have any...? Senator Chambers. [LB379]

SENATOR CHAMBERS: Senator Nelson. This is Senator Nelson? [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR ASHFORD: It is. And spelled the same, I think. [LB379]

SENATOR CHAMBERS: Well, see, Senator Nelson and Senator Carlson sit behind me and I have to make sure I'm talking to the correct one. Senator Nelson, in all seriousness, you considered to mention violent criminals. I'm looking at page 6 of this bill. Do you have a copy of it so that you can see that I'm not misstating? [LB379]

SENATOR NELSON: I believe I do here. [LB379]

SENATOR CHAMBERS: All right. Now, let's start with habitual criminal. What... [LB379]

SENATOR NELSON: What page, Senator? [LB379]

SENATOR CHAMBERS: Oh, page 6. And you mentioned in your presentation, but for

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the purpose that I'm trying to get across with this back-and-forth, what qualifies a person to be a habitual criminal? [LB379]

SENATOR NELSON: I think that it is someone who has been convicted of a violent activity three times--a felony, three times. [LB379]

SENATOR CHAMBERS: But they don't have to be violent, do they? [LB379]

SENATOR NELSON: No. No. [LB379]

SENATOR CHAMBERS: So it could be embezzlement. [LB379]

SENATOR NELSON: That's correct. [LB379]

SENATOR CHAMBERS: Three felonies. And that's not a violent crime, is it? [LB379]

SENATOR NELSON: That's true. [LB379]

SENATOR CHAMBERS: And that person is lumped with what you had said earlier. So you're not just talking about violent criminals, are you? [LB379]

SENATOR NELSON: Not in those cases and that type of felony. No. [LB379]

SENATOR CHAMBERS: Okay. Now the felony under Section 28-1205, what kind of felony is that? [LB379]

SENATOR NELSON: Are you referring here to... [LB379]

SENATOR CHAMBERS: Yes, in your bill on line 8, because I want to give you the opportunity to tell us what you have in mind. [LB379]

SENATOR NELSON: Well, those would, I think, be the three separate classes here identified by those statute numbers that I refer to here. [LB379]

SENATOR CHAMBERS: And what would those felonies be, if you recall? If you don't recall, you don't have to try to puzzle it. Somebody behind you probably knows. [LB379]

SENATOR NELSON: All right. [LB379]

SENATOR CHAMBERS: Then let me go to the next one: possession of a deadly weapon. Does the term deadly weapon embrace only firearms? [LB379]

SENATOR NELSON: It talks about firearms and also other types of deadly weapons

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such as knives and things like that. And I think the statute provides for different sentences for those. [LB379]

SENATOR CHAMBERS: But we're not talking just about firearms, are we? [LB379]

SENATOR NELSON: No. [LB379]

SENATOR CHAMBERS: And the person never needs to have used a deadly weapon before, isn't that correct? A prohibited person would be one who...well, Section 28-1206; do you know who those persons are that would be embraced in that statute? And we probably have people behind you with that line... [LB379]

SENATOR NELSON: I would have to answer that... [LB379]

SENATOR CHAMBERS: ...with that queue, as they say down here. [LB379]

SENATOR NELSON: I'm not that conversant with these criminal statutes, Senator, and probably ask those questions of... [LB379]

SENATOR CHAMBERS: Okay. Well, I'll wait till somebody else comes. [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR CHAMBERS: You're aware that you're asking for a radical shift in policy with reference to how the Legislature is going to say that convicted persons ought to be dealt with. This is a radical departure, isn't it, from what exists now. [LB379]

SENATOR NELSON: It is a departure; yes, Senator. [LB379]

SENATOR CHAMBERS: Who presented this bill to you for introduction? [LB379]

SENATOR NELSON: The city of Omaha. [LB379]

SENATOR CHAMBERS: Did the city of Omaha give any supportive reports or data which indicate that this is effective as far as the purposes of penology? Did they give you any information or just say would you introduce this bill? [LB379]

SENATOR NELSON: I was not supplied with that type of data; no. [LB379]

SENATOR CHAMBERS: Do you care whether this has anything to do with or any effect upon the purpose of incarceration, rehabilitation, and the other things that are related to penological activity? Does it make you any difference? [LB379]

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SENATOR NELSON: Yes, it does make a difference to me. I believe in rehabilitation to the extent that we're able to do it with receptive individuals. [LB379]

SENATOR CHAMBERS: Do you think certain types of offenders are beyond rehabilitation? [LB379]

SENATOR NELSON: It would appear so. [LB379]

SENATOR CHAMBERS: If a woman felt that she had been violently abused on several occasions by a person that she knew, so she shot him under conditions that would lead to her being convicted of manslaughter; that's a felony, isn't it? [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR CHAMBERS: Is she the person you have in mind as being a danger to society? [LB379]

SENATOR NELSON: Not under a manslaughter type of conviction. [LB379]

SENATOR CHAMBERS: But that would be a felony, wouldn't it? [LB379]

SENATOR NELSON: It is a felony. [LB379]

SENATOR CHAMBERS: And the crime was committed with a deadly weapon, wasn't it? [LB379]

SENATOR NELSON: But was she a violent person, Senator? [LB379]

SENATOR CHAMBERS: Was the crime committed with a deadly weapon? [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR CHAMBERS: Did a death result? [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR CHAMBERS: You know...how do you know if a person is violent if you don't base it on the act that was committed by the person? [LB379]

SENATOR NELSON: I think you have to judge on how they are during their period of confinement and if they are doing everything that's required of them and have shown remorse and don't have anything else on their record other than that manslaughter conviction, then I think that is something that would bear very importantly on whether

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they ought to be released. [LB379]

SENATOR CHAMBERS: But as a member of the Legislature, you recognize that we set the policy for the state and not the Omaha Police Department or the mayor of Omaha. You realize that, don't you? [LB379]

SENATOR NELSON: Yes, that's true. I understand. [LB379]

SENATOR CHAMBERS: Now to give you something from the area of your expertise, which is the law: You've heard the maxim "hard cases make bad law," haven't you? [LB379]

SENATOR NELSON: Yes. [LB379]

SENATOR CHAMBERS: How many cases did they bring you of somebody on furlough who did anything violent? [LB379]

SENATOR NELSON: I had nothing of that given to me other than my knowledge of the incident that happened last fall, which was all over the papers. [LB379]

SENATOR CHAMBERS: Well, I'm sure they'll have many examples, because if they're going to ask us to make a radical change in this policy and the other things they're talking about, I'm sure they'll present many specific cases. And I'll wait for that and not question you further. Thank you, Senator. [LB379]

SENATOR NELSON: All right. Thank you, Senator. [LB379]

SENATOR ASHFORD: Thanks, Senator Nelson, for your introduction. Senator Coash and Senator Christensen are having a little chat. They've arrived. (Laugh) Welcome to them. Oh, Senator Davis. Sorry. Senator Davis is here. The whole team is here today. Mr. Mayor. [LB379]

JIM SUTTLE: (Exhibits 1-3) Thank you. My name is Jim Suttle, mayor of the city of Omaha. I want to thank Chairman Senator Ashford and all the members of the committee for having us appear today. The city of Omaha is committed to doing what we can to ensure that felons convicted of violent crimes, gun crimes, crimes involving gang members, and those who are habitual repeat violent offenders are not returned to our community ill-prepared and before serving their minimum sentence. This is why the mayor's office has worked with Senators John Nelson, Scott Lautenbaugh, Bob Krist, Rick Kolowski, Heath Mello, and other Omaha lawmakers to propose the truth in sentencing legislation before you today. The legislation makes it mandatory for the Nebraska Department of Corrections to notify police before releasing violent offenders back into the communities. Right now, the city of Omaha has a gentleman's agreement

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with the state Corrections Department to let Omaha police know when they, the state, are releasing violent offenders on furlough or work release. As you heard from Senator Nelson, LB379 would require notification from penitentiary officials and allow input from local police before granting the furloughs to violent criminals. It also restricts good time for those convicted of violent crimes, gang crimes, gun crimes, and repeat violent offenders. But let me make it clear, this is not, and we are not, proposing that it include nonviolent offenders. We have invested significant time and resources to reduce the violence in Omaha with a balanced approach of enforcement, community outreach, public-private partnerships, job training programs, and jobs. That said, we cannot win the fight against violent crime alone. We need the help of our state lawmakers and the Governor to keep the violent repeat offenders off our streets. Nebraska automatically cuts prison sentences for most individuals convicted of violent crimes by at least half, and in many cases even more, because of Nebraska's good-time early release. It is unacceptable to put our citizens' lives at risk on a regular basis in order to keep costs down in the state prison system. As our Omaha senators know, state and local officials representing Nebraska's largest city have worked collectively to cut spending and to keep costs down by setting priorities. Too many violent criminals and gang members are not getting the assistance they need to establish a plan for their reentry. LB379, as currently drafted, would significantly limit but not eliminate good-time early release for the majority of gun offenders and violent criminals. After hearing from our citizens and giving this more thought, I would ask that you also consider taking this bill one step further. Omaha City Councilman, Garry Gernandt, yesterday proposed a resolution calling for the elimination of good-time early release for all violent offenders, gun offenders, and repeat violent offenders. That resolution passed 7-0, and I will give you a copy at the end of my testimony. [LB379]

SENATOR ASHFORD: Jim, with all the due respect...all the respect I can muster, which is a great deal, I'm going to have to ask you to sum up, simply because we've come to that ominous time which applies to all of us, even judges. (Laugh) [LB379]

JIM SUTTLE: We're almost there. We're almost there. [LB379]

SENATOR LATHROP: I will say, Mr. Mayor, we did stop the Chief Justice... [LB379]

SENATOR ASHFORD: Yeah, we did. We actually stopped him as well,... [LB379]

SENATOR LATHROP: ...on a red light, so. [LB379]

SENATOR ASHFORD: ...and we...some very...some real luminaries. So we... [LB379]

JIM SUTTLE: I want to point out that the resolution received unanimous support and it is clear that it matches with my concerns about this early release program for violent criminals and that it is shared citywide with our citizens, and the elected officials from

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the city of Omaha. I'm here today with Police Chief Todd Schmaderer, who is the official one to testify on behalf of the city and he will follow me in a few minutes. At this time I'd like to have my assistant pass out the resolution that was passed by the city council and I'll be glad to answer any questions you might have, and then the chief will be up next. [LB379]

SENATOR ASHFORD: And we may have some questions, Mayor. Just briefly though, the one point I would make is that the prison population and the size...well, what the prison population is, is determined by many factors, one of which is...one of those factors is mandatory minimum sentences. And LB63, which I think was passed...I can't recall whether you were mayor then or not, but certainly the city of Omaha was...asked us, and the Omaha police division asked us to pass LB63...and Senator Chambers, it was before Senator Chambers left, so it may have been before you took office. But that was a request that was made by law enforcement, county attorneys, and others. And it passed and it did make mandatory minimum sentences...well, it made sentences mandatory, in terms of years...mandatory for a number of gun crimes. And the result of...the direct result of that was it increased prison population. So the only...and I'm not arguing with your points other than to say that we did make that decision not based on prison population but on the policy considerations that you're talking about, which is law enforcement, gun crime, keeping people off the street that have committed gun crimes. So that mandatory minimum policy, which is a significant radical shift in how we dealt with gun crime, did result in increased prison population, and it is in part...partly responsible for the fact today that we're 146 percent of capacity. So those policy decisions...it wasn't the other way around. It wasn't a situation where we made policy or not based on what the Department of Corrections told us what would or would not happen. So just for the record is that we did respond at that time to that particular set of circumstances and I think in an appropriate manner. But with that, Senator Chambers. [LB379]

SENATOR CHAMBERS: Thank you. And Mr. Chairman, I hope there's as much leniency when ordinary citizens go a good amount of time past a turning on of the red light. There should be one rule for everybody. Mr. Mayor,... [LB379]

JIM SUTTLE: Yes, sir. [LB379]

SENATOR CHAMBERS: ...you mentioned that you want notification when a violent offender is released on a furlough. Did you say that? [LB379]

JIM SUTTLE: That's what we said and that's what we worked out between the chief of police and... [LB379]

SENATOR CHAMBERS: So then you don't object to these people that you keep referring to as violent offenders having a furlough. You just want to be notified. [LB379]

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JIM SUTTLE: Well, let's go back to how this started. This started when, sadly, Jermaine Lucas was on the streets of Omaha with a gun in his hand at 3:30. [LB379]

SENATOR CHAMBERS: But here's what I'm asking you. [LB379]

JIM SUTTLE: I am answering your question. [LB379]

SENATOR CHAMBERS: No, Mr. Mayor... [LB379]

JIM SUTTLE: And we did not know about it. [LB379]

SENATOR CHAMBERS: Mr. Mayor... [LB379]

JIM SUTTLE: We did not know about it. [LB379]

SENATOR CHAMBERS: I'm not a member of the Omaha City Council. You came here to speak to this committee; I'm asking you a question. [LB379]

JIM SUTTLE: I'm answering your question. [LB379]

SENATOR CHAMBERS: You are not opposed to these people you described as violent criminals being released on furlough as long as they notify you or the chief of police. Is that true or is that false? [LB379]

JIM SUTTLE: That's false. I want them to serve... [LB379]

SENATOR CHAMBERS: Okay, then that answers my question. [LB379]

JIM SUTTLE: I want them to serve their minimum sentence. [LB379]

SENATOR CHAMBERS: That answers my question. [LB379]

JIM SUTTLE: I want them to serve their minimum sentence. That's all... [LB379]

SENATOR CHAMBERS: That... [LB379]

JIM SUTTLE: ...we've asked... [LB379]

SENATOR CHAMBERS: ...answers... [LB379]

JIM SUTTLE: ...for. [LB379]

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SENATOR CHAMBERS: ...my question. And if you take all the time, I think the committee might feel that there will be less time for all those behind you if they're going to follow your example. I'm not going to engage you in a long back-and-forth. I'm trying to ask you questions that are easy to understand and an answer can be given. Did you say that the officials in Omaha, including the police and state officials, are doing all that they can--and if you didn't use the term "all that they can," however you expressed it--to counteract gun violence? Did you say that? [LB379]

JIM SUTTLE: We are doing a lot on so many fronts, and together they are making a difference in the city. We still have more to do. [LB379]

SENATOR CHAMBERS: Okay. [LB379]

JIM SUTTLE: We have more to get the illegal guns off the streets of the city. We have more to get jobs in place,... [LB379]

SENATOR CHAMBERS: Okay. You've... [LB379]

JIM SUTTLE: ...get rid of the poverty. [LB379]

SENATOR CHAMBERS: You've answered the question that I asked. You'll have a chance to elaborate. When you say illegal guns off the street, are you aware that young black men in their early teens and in some cases subteens have these high-powered pistols in their possession and have used them? Are you aware of that? [LB379]

JIM SUTTLE: Yes. [LB379]

SENATOR CHAMBERS: And has any action been taken to determine the source of these guns? Since these young children know where to find them, why do the police not know where the source is? [LB379]

JIM SUTTLE: Well, I think you're making a statement and not based upon fact. [LB379]

SENATOR CHAMBERS: I'm asking you a question. [LB379]

JIM SUTTLE: We are aware of many of the ways that guns are coming into the community regardless of what part of the border. And we are constantly addressing how do we begin to slow that down, whether it's coming in through robberies of guns and they're being sold by individuals on more of a black market approach or whether they're coming in and being sold to people who legitimately can buy them at stores but then they hand the guns over to somebody that shouldn't have it. [LB379]

SENATOR CHAMBERS: So then you're telling me that at this point you have done all

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and the police have done all and these state officials with whom you work have done all they can to determine the source of the guns that are readily available in the community in which I live. Is that what you're telling me? [LB379]

JIM SUTTLE: Well, that's a very leading question and the answer is we have a lot of knowledge. There's still more to do. There's still more to get ahead of this problem. We are incorporating many different approaches to try and get the illegal guns off the streets and to put the blockages in place from those who are trafficking in it. [LB379]

SENATOR CHAMBERS: Now to go into some of the things you spoke generally about in the bill. You said this that you're offering is a truth in sentencing bill. And by the way, that LB63 was enacted after I left. Had I been here, it never would have passed. [LB379]

JIM SUTTLE: I'm aware of that, Senator. [LB379]

SENATOR CHAMBERS: Okay. I think Senator Ashford said that that was done before... [LB379]

SENATOR ASHFORD: I couldn't recall. (Laugh) [LB379]

SENATOR CHAMBERS: Well, I recall. I just wanted to make the record clear. Mr. Mayor, you said you want this to be the truth in sentencing effort that you're putting forth today. And what about the current system do you think is untrue? [LB379]

JIM SUTTLE: I think the problem that I see, Senator, is that we spend time and energy with our professional law enforcement working with our citizens to try and find those who were the perpetrators of a violent crime. We then go through the county attorney doing their job, and the court system, and then we turn the individual that's convicted over to the state. There is a maximum and minimum sentence. Individuals are being let out on the furlough good time that have been convicted for these gun violent offenses at less than their minimum sentence, with no supervision and with no control over where they are or with whom they are meeting with. [LB379]

SENATOR CHAMBERS: Is it a secret that they can get out before their minimum sentence has been served? And you're talking about by way of parole when they have good time factored in. Correct? [LB379]

JIM SUTTLE: It's not going through the Parole Board. These are individuals let out administratively, and we did not know about it until the Jermaine Lucas case, sadly. [LB379]

SENATOR CHAMBERS: But here's what I'm dealing with. We won't get to furlough yet.

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You said truth in sentencing. Sentencing has nothing to do with furlough. Sentencing has to do with the amount of time a judge says a person must spend locked up, and that has nothing to do with furlough. So you gave an example, but I'm asking you so you won't think I'm asking a leading question, what is there about the current method of handing down sentences that is not true or truthful? [LB379]

JIM SUTTLE: I think that part is working. Once we get to the state prison system, we did not know that they are letting out the felons convicted of major violent crimes... [LB379]

SENATOR CHAMBERS: Well, let me ask the question a different way because I don't think you understand... [LB379]

JIM SUTTLE: ...and gun crimes. They're getting out early with no supervision. [LB379]

SENATOR CHAMBERS: I don't think you're understanding me. [LB379]

JIM SUTTLE: I do understand your question. [LB379]

SENATOR CHAMBERS: Furlough is not parole. Parole is when you're released. [LB379]

JIM SUTTLE: I understand that. I didn't say it that way. [LB379]

SENATOR CHAMBERS: Okay. Well, what about that sentencing--because you are the one who brought up truth in sentencing; what is there about the sentencing structure that is untruthful? [LB379]

JIM SUTTLE: The untruthful part is that the court system is determining that the sentence is a maximum and a minimum. And administratively the prison system is putting in a new time line, down here someplace, and letting individuals out on the streets with no supervision and no notification of our law enforcement. [LB379]

SENATOR CHAMBERS: Then it's your understanding... [LB379]

JIM SUTTLE: That's the part that's not true. [LB379]

SENATOR CHAMBERS: It's your understanding that parole occurs by way of the prison system and the way it operates; is that how parole is administered? [LB379]

JIM SUTTLE: Well, parole seems to be a different subject matter. Parole was coming before the Parole Board and there are hearings and there are justifications about the individual and how they're being handled. [LB379]

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SENATOR CHAMBERS: Okay. [LB379]

JIM SUTTLE: But in the good time and the work release, it's not being done that way at all. [LB379]

SENATOR CHAMBERS: When a person is sentenced and the example you gave maybe was four to eight, or whatever. [LB379]

JIM SUTTLE: Four to eight years. [LB379]

SENATOR CHAMBERS: And then you said that really translates to two to four years. Isn't that what you said? [LB379]

JIM SUTTLE: I did not say that. [LB379]

SENATOR CHAMBERS: Okay. Give me the example you gave. [LB379]

JIM SUTTLE: What I said is in the case of Jermaine Lucas he was in for a maximum of eight, minimum of four. He was out on the streets of Omaha 11 times, having served less than a year and a half. [LB379]

SENATOR CHAMBERS: Oh. So then you don't care about the sentencing of the minimum and the maximum and time released at the bottom end and the top end to determine when a person is absolutely released on parole. That's not what you're talking about. [LB379]

JIM SUTTLE: No, I do care. I do care about this, that the fact that if we have the system working and an individual is to be incarcerated four to eight years, then the system should not be putting him back on the streets of Omaha without supervision and without any justification, training, orientation, or any knowledge notification to the Omaha police chief. [LB379]

SENATOR CHAMBERS: If the system says in statute that the minimum sentence handed down by the judge can be half that if a person loses no good time, that's known, isn't it? [LB379]

JIM SUTTLE: It doesn't say that. [LB379]

SENATOR CHAMBERS: It's known. [LB379]

JIM SUTTLE: It does not say that in the statutes. [LB379]

SENATOR CHAMBERS: And here's what happens. When you get the good time, that

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establishes when you're eligible to be considered for parole, not paroled. The Parole Board... [LB379]

JIM SUTTLE: You're mixing parole and good time and this furlough program, and they're not the same. They're different. [LB379]

SENATOR CHAMBERS: The Parole Board determines at what point a person is paroled, and the Parole Board is not required to release a person when that person is first eligible for parole. So you have a date at the low end where the sentence is pronounced, which will determine eligibility; when the Parole Board can consider whether, all factors taken into consideration, this person can be let out. The Parole Board can decide, no, we're not going to let you out. [LB379]

JIM SUTTLE: That's correct. [LB379]

SENATOR CHAMBERS: The maximum sentence is reduced at the top end through the obtaining of good time. And if none of that good time is lost, a mandatory release date is established and that formula is in the statute, and there's nothing untruthful about it because it tells you what it is. So I don't know what it is you're really talking about. [LB379]

JIM SUTTLE: Well, I just said what's going on. Administratively,... [LB379]

SENATOR CHAMBERS: Well, I'm through questioning you, so you don't have to answer me. [LB379]

JIM SUTTLE: Administratively, the head of the prison system is letting people out on good time with no supervision below the minimum sentence, and there's no review by the Parole Board. [LB379]

SENATOR CHAMBERS: He doesn't let them out on good time. The Parole Board determines if they're let out because of the good time they've accumulated. [LB379]

JIM SUTTLE: That's not what's happening. That's not what happens. This is administratively being done with no oversight. [LB379]

SENATOR ASHFORD: Jim, let me try it, if I could, to see if we could...because I really am interested in finding out exactly what the chief (laugh)...and we've had good conversations. I respect the job he's doing. But let me try to understand this. You're talking about furloughs and eligibility for furloughs, and that's part of what the bill talks about. And there were a number of years...there have been different policies on furloughs for...and they've changed over the years. At one point, the Department of Corrections gave all that information out to law enforcement across the state and then

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law enforcement said, well, we really don't want all that information released that way, and it changed. It shifted back and forth. So that's before you were mayor and it doesn't...it's not really relevant, except that the policies have changed back and forth. But what I'm hearing you say and what your concern is and what the citizens of Omaha are concerned about is when someone gets out on furlough, unsupervised, they're not really unsupervised because they do have...the Department of Corrections does call in on a regular basis and find out where these people are, so they're not unsupervised. But they're out there. So your concern is that they've committed a violent, gun-related in this case, a gun-related crime. They're on a furlough. They have...they haven't been released from the Department of Corrections. They're still in the Department of Corrections but they've been furloughed for a weekend or whatever, as was the Lucas case. I think it was two days or whatever it was. Is that what your bottom line concern is here? [LB379]

JIM SUTTLE: You moved the furlough into the administrative discretion of the Department of Corrections. [LB379]

SENATOR ASHFORD: Okay. [LB379]

JIM SUTTLE: That's loud and clear in the statute. [LB379]

SENATOR ASHFORD: And I'll give you that. So it's...the department decides what to do. I get...is your concern...I'm not...this is not a trick. (Laugh) Is your concern in John's bill, Senator Nelson's bill, is what you're trying to get at, is putting into statute what has been administratively done by the Department of Corrections? Now there's an interlocal or there are letters back and forth or discussions between the chief and Bob Houston. But you want that into statute. Is that...? [LB379]

JIM SUTTLE: Only on the portion...all the portion of the statutes that you have and all the discretion you have with the Department of Corrections for nonviolent offenders, keep it. [LB379]

SENATOR ASHFORD: Okay. [LB379]

JIM SUTTLE: It's a good idea. [LB379]

SENATOR ASHFORD: Okay. Violent offenders... [LB379]

JIM SUTTLE: But when we come over to the violent offenders, those that been convicted by the system of felonies... [LB379]

SENATOR ASHFORD: Gotcha. [LB379]

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JIM SUTTLE: ...and guns, violence, or major gang activities, they should stay in the system until their minimum sentence and let the Parole Board make the decisions. [LB379]

SENATOR ASHFORD: But that's different from furloughs. Furloughs is...part of the bill says...and we can talk to the chief about this. But part of the bill is about furloughs and the other part is about good time, which relates to sentencing. And what I'm trying to ask is, again I realize some of this is technical, but is your concern primarily the Lucas case? Somebody getting out. The officer, the police division didn't know that. Something terrible happened, shouldn't happen again. Is that essentially what your concern is? [LB379]

JIM SUTTLE: Yes. [LB379]

SENATOR ASHFORD: Okay. [LB379]

JIM SUTTLE: And the fact that I think it's time for all of us to follow as we build on the questions that have been asked, there's a legal side of this but there's also a commonsense side. And it's time to listen to what's going on in the streets of Omaha. We are trying to do everything we can on a multiplicity of fronts... [LB379]

SENATOR ASHFORD: I think we all... [LB379]

JIM SUTTLE: ...to reduce the gun violence and the homicide. [LB379]

SENATOR ASHFORD: Mayor, I... [LB379]

JIM SUTTLE: So here is an example where there's a little tiny loophole that we're asking you to close... [LB379]

SENATOR ASHFORD: Okay. And that's what I... [LB379]

JIM SUTTLE: ...by putting new language in the statutes that let's us keep the violent criminals, those in gun activities and high-level gang activities, in the system; and they can get out once the Parole Board deems it okay for them to be out on some type of a program. [LB379]

SENATOR ASHFORD: So...Okay. [LB379]

JIM SUTTLE: But not administratively. [LB379]

SENATOR ASHFORD: Okay, so... [LB379]

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JIM SUTTLE: Not administratively. [LB379]

SENATOR CHAMBERS: Maybe the director can explain all of this when he comes up (inaudible) operate. [LB379]

SENATOR ASHFORD: Okay, we'll let the...and then lastly, just...and the chief can talk about this. But I think we're trying to do two things here, which is to change the sentencing laws and deal with furloughs, and those are two very different things. I know that the Omaha police division is trying to do the best they can, and that's not a...I don't think this committee quarrels with that. What I...but then just one last point just so everybody understands on the sentencing side, what we...and I apologize, Senator Chambers, you're most likely right, LB63 would never have passed had you been here. (Laugh) But in LB63, if you are charged with a 1C felony, use of a firearm in commission of a felony, 5 to 20. It think that's why it is. Or 5 to...it's more than that. [LB379]

LaMONT RAINEY: Five to 50. [LB379]

SENATOR ASHFORD: Five to 50. There's a mandatory minimum of five years in LB63, which changed the law. So there is no parole for that five years. That inmate is not eligible for parole there, and that inmate must serve the five years before they get parole. So that...or eligible for parole, so. And in that...so we're not...there isn't a situation where they would get out, you know, before that five years. [LB379]

SENATOR CHAMBERS: You're not going to make it clear. Why don't you let the director... [LB379]

SENATOR ASHFORD: Well, let me... [LB379]

SENATOR CHAMBERS: With all due respect, the director can explain what they do and the difference... [LB379]

SENATOR ASHFORD: Yeah, but I just... [LB379]

SENATOR CHAMBERS: ...between parole and furlough. You're not going to make him understand. [LB379]

SENATOR ASHFORD: Okay. All right. [LB379]

JIM SUTTLE: Right now, administratively, your Department of Corrections is letting those types of individuals out on the streets of Omaha before their minimum sentence. [LB379]

SENATOR ASHFORD: No, they aren't. [LB379]

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JIM SUTTLE: Yes, they are. [LB379]

SENATOR ASHFORD: Okay. All right. Thanks. [LB379]

SENATOR SEILER: Wait a minute. [LB379]

SENATOR MCGILL: Senator Seiler has a question. Senator Seiler. [LB379]

SENATOR ASHFORD: Yes, Senator Seiler. [LB379]

SENATOR SEILER: Thank you, Chairman. I have one question. You may not know the answer. Do you know who drafted the language that's in here? [LB379]

JIM SUTTLE: No, I do not. I assume it was your bill writers, so. [LB379]

SENATOR SEILER: Okay. Thank you. [LB379]

SENATOR ASHFORD: Okay. Thanks, Mayor, [LB379]

JIM SUTTLE: Thank you very much. I appreciate it. [LB379]

SENATOR ASHFORD: Right. Have a good day. Chief. [LB379]

TODD SCHMADERER: Good afternoon, everyone. I'm Todd Schmaderer, chief of police, city of Omaha. I always consider it an honor to come here and testify in front of the committee. I have some prepared remarks. I think I'm going to spend some time just kind of clarifying what we're looking to do here with LB379. LB379, as it's written, it provides for some talking points. There needs to be some amendments to it. I'm a supporter of LB379 with the amendment to require all violent gun offenders to serve at least 70 percent of their full sentence. So in the area of the furlough process... [LB379]

SENATOR ASHFORD: Todd, where did that come from? We've got the... [LB379]

TODD SCHMADERER: This is...it's the city council resolution. [LB379]

SENATOR ASHFORD: Oh, that's the city council resolution. [LB379]

TODD SCHMADERER: Yeah. Right, right. [LB379]

SENATOR ASHFORD: Is that the one we just did or we just got or...? [LB379]

TODD SCHMADERER: Yeah. It just took place yesterday, Brad. [LB379]

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SENATOR ASHFORD: Okay. Oh, boy. All right. Sorry; go ahead. [LB379]

TODD SCHMADERER: Right. [LB379]

SENATOR ASHFORD: Go ahead. [LB379]

TODD SCHMADERER: Sure. I'll talk about it...I'll talk about some general terms. I'll get into the furlough process. I'll get into the good-time application. There's some misunderstandings of that. In essence, a very small percentage of our population commits violent crime: less than 1 percent. And so when we identify that "1 percenter," it's very important we address that individual appropriately with our penal system. Even amongst the criminal element it's very rare to pick up a gun and actually use it in the commission of a felony. So when we have that person, we need to address them appropriately; and oftentimes it becomes a matter of homicide prevention. One of the things I've strived to do is buttress our community policing model to improve police community relations. We've streamlined our department to address the small percentage of violent offenders. So when we have these violent offenders and they're released administratively on furlough, or I'm going to suggest a better way to do the good time, it becomes a massive violation of public trust when we arrest this offender only to have them reenter society to reoffend. As the furlough goes, we all know how we got here under the furlough process. I won't belabor that point. Bob Houston and I have worked out a very good system. It has been working. What I'm asking to do is take that system that's working and let's codify it into law. Let's make it so when Mr. Houston leaves or when I'm not around, the two agency heads, there's a road map to play with. As far as the good-time early release, I'd like to be more representative of some of our surrounding states, because it provides a general deterrence to our community and reduces recidivism. For an example, in the state of Iowa, violent forceful felonies are eligible for good-time release upon serving 70 percent of their sentence. The mandatory minimum that we have here, I'm asking to apply 70 percent good time to that. Colorado, 75... [LB379]

SENATOR ASHFORD: Explain that. Just simply. [LB379]

TODD SCHMADERER: Well, if you get five to ten years mandatory minimum for these offenses that we've talked about here today, the violent gun offenses, felony in possession, etcetera, the mandatory minimum, you're out in five, and that's the part that was sort of misunderstood earlier. What I'm saying is if you make 70 percent good-time application to that, now they're out in seven years instead of the five. And that's what our states that surround us do. Iowa does 70 percent; Colorado, 75 percent; Kansas City, 5 percent; South Dakota, they don't even have that application. And so if you look at Omaha compared to, say, Des Moines or Council Bluffs right across the river, Omahans are more...we're about 61 percent more likely to be a victim of a homicide or

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a robber, and perhaps that's one area we need to look at. So in conclusion, just the reduction of violent crime in Omaha is the responsibility of a number of players, and we're asking this bill as a format to take a look at buttressing up some other areas. [LB379]

SENATOR ASHFORD: Okay. Thanks. Thank you. [LB379]

TODD SCHMADERER: I see the red light, so I'm definitely stopping. [LB379]

SENATOR ASHFORD: Yeah, it gets...I think...yeah, Senator Chambers. [LB379]

SENATOR CHAMBERS: The first thing I'd like to say, a police officer not only enforces the red light rule on others, he follows it himself and he sets a good example. Chief, since I didn't hear what you testified to, I'm not going to ask you questions because you may have covered it already. And among the others who will come, if anything comes up that I'd have a question about, it would be based on what that person says; so I don't want you to think I have any reason other than what I'm giving you for not questioning you. [LB379]

TODD SCHMADERER: I understand. Thank you. [LB379]

SENATOR ASHFORD: I don't see any other questions. Thanks, Chief. Any other proponents of this bill? Any...proponents. John. [LB379]

JOHN WELLS: (Exhibits 4 and 5) Good afternoon, members of the Judiciary Committee, Senator Ashford. John Wells, president of the Omaha Police Officers Association. A couple of handouts; one you may remember from a couple weeks ago, an individual by the name of Heather Duhachek who testified on another bill. She could not be here today and asked us to provide written testimony on her behalf in favor of LB379. [LB379]

SENATOR LATHROP: Excuse me, John. Who's she with? [LB379]

JOHN WELLS: She is the...she's just a citizen. [LB379]

SENATOR LATHROP: Okay, okay. [LB379]

JOHN WELLS: She's a victim advocate. If you remember, she was a victim of a pretty severe assault. [LB379]

SENATOR LATHROP: I do remember now. Thank you. [LB379]

JOHN WELLS: Our organization stands in support of LB379. To reiterate what the chief

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said, as the bill is before you, it is essentially a shell bill. It does need some work. The offenses that are contained within the bill already have mandatory minimums; we've discussed that. Our organization believes that in order to combat the gun violence that's plaguing Omaha where we literally have children that are innocent bystanders that are being murdered on the streets, in order to do that we have to fundamentally change the way we handle corrections. We need to have a discussion about the way we're conducting business, and part of that discussion is: Are we doing enough to make sure we keep multiple repeat violent offenders off the streets of Omaha? Just kind of following sentencings and people that are arrested, it seems that we clearly have an issue with the sentencings where if a judge sentences somebody to eight to ten years, it becomes a flat sentence due to good time where it's really a straight flat sentence of five years. And there's some people that are in for very serious crimes that are otherwise being released seemingly early. And just anecdotally, when we talk about it amongst the citizenry and our members, it clearly seems to be an issue that's worthy of discussion. As the chief talked about, the city council resolution, we are also in favor of, for serious violent offenders, multiple repeat offenders, of requiring some sort of mandatory minimum as far as 70 percent of the sentence, something along those lines. I want to be clear, our organization is absolutely in favor of rehab. We don't believe that especially nonviolent offenders are beyond capable of help. But unlike the states that surround us, Nebraska doesn't even require for their good time that people take part in the GED, the substance abuse counseling, the vocational training; that when people are released from prison they should have some sort of education, counseling, or at least vocational training. At this point, because I see the lights, I'll stop my testimony and answer any questions. [LB379]

SENATOR ASHFORD: Any questions of John? Senator Chambers. [LB379]

SENATOR CHAMBERS: Officer Wells, we meet again. [LB379]

JOHN WELLS: Sergeant. But yes, Senator, nice to see you again. [LB379]

SENATOR CHAMBERS: All right. Oh, you said sergeant? [LB379]

JOHN WELLS: Yes. [LB379]

SENATOR CHAMBERS: Well, I mean in the sense of a police officer, so. [LB379]

JOHN WELLS: I understand. [LB379]

SENATOR CHAMBERS Okay. They mention in this bill habitual criminal, and you heard my discussion with Senator Nelson. A person who is a habitual criminal need not have committed any violent felony in order to get that label. Isn't that true? [LB379]

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JOHN WELLS: That is correct. [LB379]

SENATOR CHAMBERS: But with the way the discussion has gone forth, all of these people are considered violent and contributing to the gun violence on the streets of Omaha based on the way it's been framed, especially in the words of the mayor. Are you saying that everybody who gets the label habitual criminal is likely to commit a violent offense if he or she is allowed out on furlough? [LB379]

JOHN WELLS: Absolutely not. Obviously, there's some room in there. You have people that would be labeled a habitual criminal that are purely property offenders, like a serial shoplifter. [LB379]

SENATOR CHAMBERS: And I know you know, but this is for the record. [LB379]

JOHN WELLS: I understand. [LB379]

SENATOR CHAMBERS: And that's why I'm asking you because you know what you're talking about. Now if a person uses a deadly weapon to commit a felony under Section 28-1205, are you aware of what 28-1205 relates to? [LB379]

JOHN WELLS: Yes. [LB379]

SENATOR CHAMBERS: You said yes? [LB379]

JOHN WELLS: Yes. [LB379]

SENATOR CHAMBERS: Okay. For the record, what does it relate to? [LB379]

JOHN WELLS: Using a weapon in the commission of a crime. [LB379]

SENATOR CHAMBERS: Okay. So that could have been stated instead of making a statutory reference to (inaudible) anybody who read the statute would be aware. Now I gave the example of a woman who was abused, or anybody who would shoot his or her abuser under circumstances where it would be found not self defense but manslaughter, that would qualify that person to have been, one, convicted of use of a deadly weapon to commit a felony. Isn't that correct? [LB379]

JOHN WELLS: That is correct. [LB379]

SENATOR CHAMBERS: And that is not the kind of person who would be envisioned as one to commit gun violence on the streets of Omaha. [LB379]

JOHN WELLS: I would agree with you. Yes. [LB379]

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SENATOR CHAMBERS: Now, convicted of possession of a deadly weapon. I think it was Senator Nelson who did acknowledge that there are other implements besides guns which are considered deadly weapons. [LB379]

JOHN WELLS: Correct. [LB379]

SENATOR CHAMBERS: And a person who is not allowed to have in his or her possession a deadly weapon could have one of these weapons and the person who would be prohibited would be one who had been convicted of a felony. Is that correct? [LB379]

JOHN WELLS: That is correct. [LB379]

SENATOR CHAMBERS: And the felony could have been embezzlement. [LB379]

JOHN WELLS: Correct. [LB379]

SENATOR CHAMBERS: And the weapon didn't have to be a gun. It could be a knife. [LB379]

JOHN WELLS: That is correct. [LB379]

SENATOR CHAMBERS: And the knife could be used for a strictly legitimate purpose, but the mere possession of it by that person would be a basis for convicting that person of possession of a deadly weapon. [LB379]

JOHN WELLS: That is correct. [LB379]

SENATOR CHAMBERS: So these terms, if you look at the language in the bill, do not refer specifically to violent criminals as the testimony has suggested? I should have phrased that where I let the sentence go up so you'll know it's a question. If somebody read this language and they had the knowledge that you had, they would be aware that even though people may wear these titles, they may not be what in the ordinary person's view a violent criminal, even if they committed a violent act. [LB379]

JOHN WELLS: I would agree with you, and that's why we're stating before you that this bill needs some work by this committee. [LB379]

SENATOR CHAMBERS: And see, you...he and I had a long conversation and he persuaded me to make a change in a bill that I had. He knows how to pull my fangs. He's doing it again today. But I'm asking you for the sake of the record so it can be clear that if there's disagreement expressed or seeming to be expressed by the questioning,

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it's not necessarily challenging the underlying statements that are even made in testimony with which I disagree. But I think the bill is not reflective of some of that testimony, so I want to get to a part that I am concerned about and I think we will disagree on. To what extent do you think good time ought to be restricted and for which types of offenders should it be restricted, in your view? [LB379]

JOHN WELLS: Well, I think when you're talking truly violent crime--murder, rape, robbery, serious felony assaults with firearms--in those instances it's certainly that good time should be restricted. And then for other violent offenses, obviously that's open for discussion. There's no hard and fast rule. And certainly nonviolent offenses, we're not opposed to good time, especially if it's earned by requiring some sort of vocational training, GED...getting a GED, or some sort of substance abuse counseling. [LB379]

SENATOR CHAMBERS: Now if this bill were enacted as it is, how much reduction do you think there would be in the gun violence on the streets of Omaha, and how soon would it be manifested? [LB379]

JOHN WELLS: In this particular bill as it's written right now, it's hard to say. I don't envision much because again these three crimes in there already have a mandatory minimum, and so I don't know what the direct impact would be. [LB379]

SENATOR CHAMBERS: So you're not pushing this bill as something that if enacted is going to reduce the gun violence in Omaha? [LB379]

JOHN WELLS: Not this alone, no. We have to take a drastic different approach, and I think the chief is doing some of that with reorganizing the department. But the rest of us as a citizenry, the Legislature, all of us that are involved in this in the criminal justice process have to reexamine how we're going about this and conducting business, because what we've been doing hasn't been working. And I think this is a first step in trying to address some of these issues. [LB379]

SENATOR CHAMBERS: I'm aware that it is of no concern to the police or the mayor as to how the Department of Corrections operates, obtains a budget, or any problems it may have due to a shortage of money; so I'm not asking you to resolve those issues. But do you think that the Department of Corrections, in order to function in the way the Legislature thinks that department should function, good time plays an important role in not only maintaining order but giving incentive for people to behave. And although it doesn't seem the mayor cares whether they behave in prison or not, we do. We want people who are locked up to not commit violent acts against other inmates or staff members. And if you take away any opportunity to be rewarded for good behavior, there's not going to be good behavior. We know that on the street. If you're a parent, you know that with your children. I knew it with my children. We all know it. We all say that good behavior is to be rewarded. You don't reward unacceptable behavior. So do

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you think it's possible that the job of operating a prison could be more difficult if you severely restricted and in some cases removed good time? [LB379]

JOHN WELLS: Well, I think that's kind of a multilayered question, because if you just say strictly removing all good time, period, then potentially you could have some issues. But good time, as it stands right now, you essentially can't lose it. It's automatic. But I think if you required vocational training, substance abuse counseling, something along those lines in order to earn that good time, it could potentially make the prison system a better place. [LB379]

SENATOR CHAMBERS: But you can lose it. It's granted when you come in and then as you misbehave there's a subtraction from that good time. [LB379]

JOHN WELLS: And without getting into a debate, Senator, we've asked this of the Department of Corrections, just under a public records request, that under what certain conditions can you lose good time? And they essentially told us you can't. [LB379]

SENATOR CHAMBERS: Well, we'll see what the director says (inaudible). [LB379]

SENATOR LATHROP: I'm sorry. I didn't hear what you said. [LB379]

JOHN WELLS: We've done a public records request of corrections that says, are there any circumstances where somebody can lose good time? And they've essentially told us that, no, that the granting of the one-for-one, the one day for one day, is essentially automatic. [LB379]

SENATOR LATHROP: Not dependent upon behavior. [LB379]

JOHN WELLS: No, it's not. [LB379]

SENATOR LATHROP: Pardon me for interrupting. I didn't hear his answer. [LB379]

SENATOR CHAMBERS: That's all right because you made clear what he is saying, and that's why I said we'll ask the director about that, because I know some people who are serving what is called good time now because they have lost that good time. They're trying to earn it back now. If they hadn't lost it, they would be out. But anyway, I won't argue with you about that. We'll ask the director when he comes, and I don't have any more questions of you. And I appreciate your coming. [LB379]

JOHN WELLS: Thank you, Senator. [LB379]

SENATOR ASHFORD: John, and I think your suggestion of working with the Department of Corrections is a good one, and we do need to have that dialogue now

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and in the future no matter what law is passed, and I appreciate that. The one...just so that we...at least I'm on the same wavelength, the passage of the...we did not have mandatory minimums for these gun crimes before LB63, correct...right, I mean? [LB379]

JOHN WELLS: Correct. [LB379]

SENATOR ASHFORD: And now that they have passed and been in effect for a few years, there's been an increase in population...increase in corrections population to some extent resulting from LB63 and mandatory minimums. And you don't have to exactly... [LB379]

JOHN WELLS: But I understand it, as you talked about it, yes. [LB379]

SENATOR ASHFORD: You understand that's correct. So...and I believe what you said is that because many--if not all--but many of the crimes, at least the three crimes you're talking about in the bill that do have mandatory minimums, that does have an impact on how you would approach the sentencing regimen for those particular crimes inasmuch as we already have mandatory minimum sentencing--no granting of parole, none of that. [LB379]

JOHN WELLS: Certainly. [LB379]

SENATOR ASHFORD: Okay. [LB379]

JOHN WELLS: And we've just found just by--and it's anecdotal evidence, obviously--but looking at the sentencings in Douglas County for the gun offenses that typically judges give the minimum. [LB379]

SENATOR ASHFORD: Right. And they...yeah, right. Okay. [LB379]

JOHN WELLS: But it is a mandatory minimum. [LB379]

SENATOR ASHFORD: But it is a mandatory minimum. Okay, fair enough. Thanks, John. Thanks for your comments. I don't see any other questions. [LB379]

JOHN WELLS: Thank you. [LB379]

SENATOR ASHFORD: The league of cities is here? [LB379]

GARY KRUMLAND: Senator Ashford and members of the committee, my name is Gary Krumland. Last name is spelled K-r-u-m-l-a-n-d. I'm just here, the League executive board wanted to go on record in support of LB379, and I guess the one thing they asked me just to mention that... [LB379]

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SENATOR ASHFORD: As written, or? [LB379]

GARY KRUMLAND: Well, the one thing they asked me to mention is Section 1 where it clarifies that it's the local law enforcement that's notified when a furlough is...right now, the law just says "a" law enforcement agency. And we like the specification and, if anything, expand the notification to a chief of police to other cities other than just simply Lincoln and Omaha. [LB379]

SENATOR ASHFORD: So it's the notification that you're supporting. [LB379]

GARY KRUMLAND: Well, I think to support the concepts and we'll defer to the details to... [LB379]

SENATOR ASHFORD: But just so I understand. The League of Municipalities is supporting the good-time provisions as written in this bill? [LB379]

GARY KRUMLAND: No, I don't...well, I'll put it this way: They support the concepts and what is trying to be done, and they specifically like the notification of the local law enforcement agency. [LB379]

SENATOR ASHFORD: So that would be the underlying part that you... [LB379]

GARY KRUMLAND: Yeah. [LB379]

SENATOR ASHFORD: Okay. Thank you, Gary. Yes, Senator Seiler. [LB379]

SENATOR SEILER: Thank you, Mr. Chairman. Gary, that was the question I was asking about who drafted it. I notice that it says a local law enforcement agent. You know, like Hastings, you've got the sheriff and you've got the chief of police and... [LB379]

GARY KRUMLAND: And I think we would prefer to clarify that so that if it's going to be a... [LB379]

SENATOR SEILER: Are you going to offer an amendment on that? [LB379]

GARY KRUMLAND: I mean, we could put something together if that would be helpful. [LB379]

SENATOR SEILER: Okay. Because I do see communities like Norfolk, Columbus, Hastings... [LB379]

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GARY KRUMLAND: Yeah. And that would be what we would mean. And so that...
[LB379]

SENATOR SEILER: ...would have a problem. Thank you. [LB379]

GARY KRUMLAND: ...it would specify who it is that actually gets the notice. [LB379]

SENATOR ASHFORD: Thanks, Gary. I don't see any other questions. Thank you. Any other proponents? Any opponents? How many opponents do we have? A few. Okay. Any neutral testifiers; do we have neutral? Okay. [LB379]

CHRIS EICKHOLT: Good afternoon, Chairman Ashford and members of the committee. Chris Eickholt, C-h-r-i-s, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. To clarify first, our organization takes no position on Section 1 of the bill, the notice provision or the notice requirement. But we are opposed to the remainder of the bill specifically and primarily because of the broad effect that this bill will have. The bill, as you've heard some of those testifiers testify already, is in response to a situation in Omaha with someone with a firearm. But this bill goes well beyond that, and Senator Chambers has talked about this already. The bill refers to deadly weapons in 28-1205 and 28-1206. If you look at the definition of deadly weapon, it is not simply firearms and it's broadly defined--specifically the term "knife"--is very broadly defined and that's defined in 28-1201(5). It makes both use and possession ineligible for good time and it just goes well beyond simply firearms. Senator Chambers mentioned this earlier. The bill also includes habitual offenders. That is not synonymous at all with violent offenses. To be a habitual offender under 29-2221, a person needs to be convicted of at least two prior felonies on two different occasions and at least get a year imprisonment. It may not even be a requirement of a felony. It's just something that gets them into the prison system for a year and then they are a habitual offender. Then that's called the three strikes law that can have nothing to do and is not required to be a violent felony whatsoever. It can be simple possession. It can be embezzlement. It can be any sort of offense like that. You know, it's important to remember--and Chair Ashford has referenced this before--that a couple years ago the body increased significantly the penalties for firearm offenses and other weapons offenses, with mandatory minimums, and the body has already acted on that. And this just further, we would feel, fill the prisons with people who might not normally be there. But, you know, Senator Chambers referenced this earlier: Furlough and good time is based on sort of a rehabilitative concept; it's that you can change people. And if you make people ineligible for good time or ineligible for a furlough, they're denied that opportunity. I know that the fiscal note from the department anticipates significant fiscal costs. But there is another cost the department will have to experience and that is managing a significant prison population where people have no incentive to be good and have no incentive to change. And what you will have is you will have sort of the unfinancial and nonfinancial effect on

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the staff and the department; at least I feel and we feel it will affect them. A person could be charged with a committed actual crime in an institution but it doesn't need...they don't need to be polite or respectful to staff or even compliant with staff. And if they've got nothing to lose, they're going to do what they want. And I think that you'll have a significant number of inmates, as the bill is written, that will be in that category. And the light is going to come on here in a bit. [LB379]

SENATOR LATHROP: There you go. Perfect timing. Thank you. I don't see any questions. We appreciate your testimony and always hearing from your organization. Next opponent, please. Good afternoon. Welcome to the Judiciary Committee. [LB379]

BOB HOUSTON: (Exhibit 6) Good afternoon. Thank you. Well, Chairman Ashford is not here. So thank you; good afternoon to the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. I'm here today in opposition of LB379. The bill proposes changes in the sentencing credits for certain crimes, commonly referred to as good time. As our fiscal note indicates, such a provision would have an impact on the population of the department, increasing the number of inmates into the future. While our facilities continue to function in a safe manner, currently we stand at approximately 145 percent of our rated capacity. Good time is an important facility management tool for the department as we manage this population. Another important management tool is the ability to furlough. LB379 proposes limitations on the department's ability to furlough low-custody inmates into the community. Our department has enjoyed a long positive working relationship with law enforcement entities, including the Omaha Police Department. Furlough notices were provided for law enforcement at one time; however, the practice ended over 20 years ago at the request of law enforcement agencies. Since the fatal shooting of a furloughed inmate in September 2012, the department has reviewed policies and procedures and made significant changes. Overnight furloughs ended November 1, 2012, for all community center inmates who are not on the reentry furlough program and not within one year of a release date--discharge or parole. Only nonviolent inmates are placed on extended furloughs. They receive intense supervision by parole officers and must submit and be approved for activities outside of the home. Nonviolent is defined as current offense with past violence considered on a case-by-case basis. Additionally, furloughs are not allowed unless they serve a specific rehabilitative purpose. Such purposes include housing, supportive relationships, employment, education, mental health, substance abuse services. Unless an inmate can justify the furlough as strengthening the likelihood of successful reentry, the furloughs will not ordinarily be granted. The department's discretion is important to effectively managing the inmate population. The changes made to our department less than 60 days following the incident demonstrates the flexibility the department needs to have and respond to ever-changing conditions in order to promote public safety. And I'll answer any questions you may have. [LB379]

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SENATOR LATHROP: Thanks, Bob. Senator Chambers, you're recognized. [LB379]

SENATOR CHAMBERS: Mr. Houston, could the Corrections Department...first of all, the Corrections Department consists of more than the State Penitentiary in Lincoln. Is that true? [LB379]

BOB HOUSTON: That's true. [LB379]

SENATOR CHAMBERS: Would you mention some of the other institutions and facilities that are embraced in that term? [LB379]

BOB HOUSTON: Okay. We have essentially three major categories. We have our institutions--we have ten facilities. We have the state's parole officers. And we have our industries program. The ten institutions are, in the Omaha area we have the Youth Facility, we have the Omaha Correctional Center, the Community Center. In Lincoln we have four facilities: we have the State Penitentiary, the Diagnostic and Evaluation unit, the Lincoln Correctional Center, and our Community Center. In Tecumseh we have the TSCI; in York we have the women's facility; and in McCook we have the Work Ethic Camp. We have parole offices across the state. [LB379]

SENATOR CHAMBERS: So when the Department of Corrections is mentioned, it's not just one building. It's not just one operation, but it could be called a far-flung operation scattered throughout various parts of the state. [LB379]

BOB HOUSTON: That's correct. We have 2,300 staff. [LB379]

SENATOR CHAMBERS: Would it be difficult to effectively manage the department--referring to all of these institutions? Because when we pass a law it's going to cover the waterfront. If every time something that none of us would like to see happen would result in a radical change in how the department operates, could that create a sense of instability and uncertainty, not just for the inmates but for the staff and the others who are charged with administering that system? [LB379]

BOB HOUSTON: Yes. I'm going to speculate that the specific concern is the loss of good time. [LB379]

SENATOR CHAMBERS: Have you on occasions, prior to this one incident that was mentioned, been in discussions with people about things that should or should not happen as far as certain policies and their implementation, and as a result of those discussions changes would result without legislation being involved at all? [LB379]

BOB HOUSTON: We make multiple decisions every day concerning public safety. [LB379]

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SENATOR CHAMBERS: Oh, the question I wanted to ask you, because it's new to me that a person cannot lose good time when locked up; is that true? [LB379]

BOB HOUSTON: No, they can lose their good time, and I can explain that if you'd like, Senator. [LB379]

SENATOR CHAMBERS: Because if they couldn't then I was going to tell you, you and I've got some conversations because of various situations. Now I think it's clear that I'm opposed to this bill; and from the questions asked, without just saying I don't like what the bill does, it shows that the terminology used doesn't even apply to the people they're describing, like all these violent criminals and the street crime. But the categorizations that they put in the bill wouldn't necessarily apply in any one of them to somebody of the kind they describe. How many instances--and I don't mean the specific number because maybe nobody knows--has there been a person on furlough who committed a serious violent crime? [LB379]

BOB HOUSTON: Very few. I don't recall. Now we have...if I could explain further. We have 580 beds in our Community Centers; and the inmates, for the most part, furlough from one of those two centers, either in Lincoln or in Omaha. We have community custody at Work Ethic Camp but they do not furlough from there. When a person is placed there, they can go out on passes; they go to work, whether it be on detail or they work with an employer; and they can furlough. Or they can walk away from the center, because it's a community center. What we're talking about here is a violent offense that came as a result of a furlough, but it could happen in other ways as well. And so when we place somebody in the Community Center, they've gone through a lot of screening. They've gone through the programs mentioned earlier, depending on their sentence length and what their needs are. And so I might be losing my point at this point, but just to give you a description as to where the furloughs have come from. Now some of them can come from the institutions; they could be for a funeral. But they have to be a low-custody inmate that just happens to be in a fenced facility. [LB379]

SENATOR CHAMBERS: And now in the interest of full disclosure, you and I have had contact with each other down through the years. Is that true? [LB379]

BOB HOUSTON: That's true, Senator. [LB379]

SENATOR CHAMBERS: Has it always been agreeable? [LB379]

BOB HOUSTON: Senator, I would say it's not always been agreeable. [LB379]

SENATOR CHAMBERS: Has it placed you in a position of some discomfort on occasion? [LB379]

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BOB HOUSTON: Somewhat. [LB379]

SENATOR CHAMBERS: So this is not a situation where we have a dog and pony show and you and I see eye to eye on everything so we just get along here because we always get along? [LB379]

BOB HOUSTON: We always get along in the end, Senator. [LB379]

SENATOR CHAMBERS: And if I have a serious concern, have I been reluctant to very forcefully tell you my concern and suggest that there's got to be a change? [LB379]

BOB HOUSTON: Senator, you have my phone number. [LB379]

SENATOR CHAMBERS: Right. And have I made use of it? [LB379]

BOB HOUSTON: Oh, yes. [LB379]

SENATOR CHAMBERS: And have there been some times when you may have wished I didn't have your phone number? [LB379]

BOB HOUSTON: No, I enjoy talking to you, Senator. [LB379]

SENATOR CHAMBERS: Right. And here's what I'm getting to: I can understand a politician in a hard race for mayor reelection, we're all grown. I haven't seen that mayor down here since I've been on the Judiciary Committee telling us and instructing us how the Department of Corrections ought to be run. Hasn't...he has never come down here to point out what they're doing to find the source of the guns in my community. And I don't accept what they say about, well, we're doing the best we can. So I'm saying this for the record; I don't know where he is now but I'm not intending it to be behind his back. We formulate policy. Some of us have spent a lot of time--in fact, at least one of us decades--working very closely with, in, and sometimes against the Department of Corrections. And not all of that is going to go by the boards because of one bad incident about which I have serious questions. And when I told the county attorney I'd like to see the reports on that incident where a person...a gun is out of that person's reach and while they've got the drop on him he's going to go jumping for a gun. I don't believe it happened that way. The county attorney is supposed to share information with me. He has not done it. So just because police say something happened a certain way, I don't accept it. They say or the mayor said sometimes we have to use common sense. Well, when I hear an explanation that makes no sense to me, I want information and I don't get it. So here's what I'm saying all that for: You work for the state; we set the rules according to which the Department of Corrections works--not the Omaha police, not the mayor, not a sheriff, not anybody who is not a part of the Legislature and the Governor's

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Office. And the Governor cannot even dictate that the department do something that violates the law. So I'm only one person, but for my part you're not going to have to worry about having to make wholesale changes in good time, furloughs, or any of the other things that this bill talks about--and it talks about it in very imprecise, inapplicable language. One thing is said in the statute and something else is given by way of testimony. And I want you to know this so that you can count on me to deliver on what I say. And this bill is worse than LB63 was, and the one who pushed for that bill created for himself a job: Senator Friend. And then when he got the job and they managed to get rid of the community corrections group that was working effectively, he couldn't perform the job; so he's out of it and he's back at a bank now. And that's what happens when this Legislature will allow the police to come in here and say we want mandatory sentences. Then when we have overcapacity and we talk about building another prison, the city is not going to come up with any money to do it. So I'm looking beyond a very bad incident--even if it happened the way the police said--to what my duties are as a member of this Legislature, and I'm going to carry out those duties and I don't care how many police come here in their uniforms or without their uniforms. My job is to see that our state institutions function properly and the Omaha Police Department does not comprise experts in penology. The mayor is not such an expert, and I asked are there studies on which they're basing this? Are there reports? Were there a lot of these incidents? And I'm not sure, in my absence, whether all that was presented, but if it was I'll look at it. And I used you as a sounding board. But here's the question that I'm asking you: When you came here in opposition to this bill, if the bill were enacted, what is the most difficult problem that would be created as a result of this bill if it were to be enacted? Because maybe I can't stop it. [LB379]

BOB HOUSTON: Well, let me cut it in two parts as the bill does. One has to do with furloughs and the other one has to do with good time. With the furloughs, we use our discretion. We narrowed it down in 60 days. If we see a public safety need, we can narrow our discretion down very shortly. We can respond. If all of a sudden nonviolent offenders become a problem, we can take action and so forth; and we use our discretion. There's nobody that's going to have my job in the future that won't use their discretion in that way. The second part of it has to do with good-time laws. And the...we do use good time in two ways to incentivize the inmates. The day-for-day good time that the inmates get, we can take that from them. You and I have had discussions, Senator, and you know that we exercise that authority on occasion. We also, under our administrative regulations, we can also restore that good time, and we do just that with good behavior. There is another good time that was introduced under LB191, two years ago, and that has to do with good time that can only...the inmates behave their way there. In other words, they have to be clear of all class I and II misconduct reports for a year and they can only have three class III or minor reports. That might be for not making their bed or things such as that. And then they earn three days a month, and that good time we do not take from them. They toll that up. Now if they commit an offense, then they stop earning that and they get zero good time for a year until they've

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gotten past that. But going back to the day-for-day good time, we have a disciplinary process. We have due process that came out of a landmark decision, Wolff v. McDonnell out of Nebraska. And we followed that faithfully and it's only under those circumstances that we deduct their good time. [LB379]

SENATOR CHAMBERS: So the term "good time" is not just a unitary notion. There is a lot of complexity involved in what that term means, what it covers, and even how it's administered. [LB379]

BOB HOUSTON: That's exactly right. [LB379]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB379]

BOB HOUSTON: And that's part of the sentencing process; not something the department does. [LB379]

SENATOR ASHFORD: Bob, I do appreciate the work that you and the chief have done in shoring up some of these administrative issues, so I appreciate that; and it's working, and the chief indicates as much, and you indicate as much, so that's important work. Just for the record so that I fully understand it, and I know Senator Chambers doesn't like this one single bit, but if there is a five-year mandatory minimum sentence given as part of the sentence for a 1C felony, that person is not eligible for parole, is that correct, within that five years? [LB379]

BOB HOUSTON: Right. They have to serve that. [LB379]

SENATOR ASHFORD: And that person is not able to accumulate any good time within that, so it's five years; they have to serve the five years. [LB379]

BOB HOUSTON: They have to serve the five years, yes. [LB379]

SENATOR ASHFORD: Okay. And the sentence could go beyond that, but at least the five years. And that was, to Senator Chambers' point and something he disagrees with from a policy perspective, but what we all agree on, that that was a policy decision made by the Legislature that does have an impact on the Department of Corrections and how they organize themselves. Correct? [LB379]

BOB HOUSTON: Yes, that's correct. [LB379]

SENATOR ASHFORD: Okay. And the discretion...and I guess one last question. If you were not...if we were to put all of this furlough criteria into statute and it would limit your discretion by that criteria without--this is an abstract question because we haven't put it in statute yet--but what is important about having the flexibility or the discretion to deal

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with furloughs, for example? [LB379]

BOB HOUSTON: Well, whenever we make changes like this, obviously inmate litigation would follow; so that would be an expense to the state as well. The other thing is, is that by having the discretion, we're able to respond very quickly to things, and that's what happened here. [LB379]

SENATOR ASHFORD: Well, and in fact you didn't have to go to the statute... [LB379]

BOB HOUSTON: No. [LB379]

SENATOR ASHFORD: ...to deal with the chief. [LB379]

BOB HOUSTON: Right. [LB379]

SENATOR ASHFORD: And as I recall--and the chief confirmed this to me on several occasions, at least two occasions when we talked about it--you started talking about this matter immediately,... [LB379]

BOB HOUSTON: Yes. [LB379]

SENATOR ASHFORD: ...correct? The matter being the Lucas case. [LB379]

BOB HOUSTON: Within hours. Within hours of the tragedy we were speaking. [LB379]

SENATOR ASHFORD: Well, it sounds to me like you and the chief did what you're supposed to do. [LB379]

BOB HOUSTON: Well, I introduce him now as my new best friend. [LB379]

SENATOR ASHFORD: Yeah. Well, I mean... [LB379]

TODD SCHMADERER: Likewise, Bob. [LB379]

SENATOR ASHFORD: Yeah. Well, I'm serious about that. I mean, it seems to me that we should be...and we make policy, and obviously Senator Nelson has brought us a policy change, but as far as...to consider. But as far as what you've done, you and the chief have done to react to a situation which was terribly unfortunate, you have acted very, very appropriately and there has not been an incident since that time,... [LB379]

BOB HOUSTON: No. We...the police... [LB379]

SENATOR ASHFORD: Like that certainly, but... [LB379]

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BOB HOUSTON: Oh, I'm sorry. [LB379]

SENATOR ASHFORD: ..like that. [LB379]

BOB HOUSTON: Yes, the police department has been very modest in what they've asked for us to do. And with that, we've gotten information that indicates this person is a direct threat and we've taken action on that, taken them back into the facility. Or the other thing that might happen is that there's some real concerns but not enough to take the person off the community program and not even enough to take them off the furlough, but instead of having an overnight furlough they would have a furlough during the day, and then at a later point they can get the overnight furloughs. The overnight furloughs are really for the purpose of the family so that they don't have to make so many trips to the facility to pick them up. [LB379]

SENATOR ASHFORD: And your recidivism rate is what? [LB379]

BOB HOUSTON: Very low. It's around 26.8 percent. [LB379]

SENATOR ASHFORD: And how does that relate to the national...? You're on the national boards and so forth, so you have a...you're aware of how that recidivism rate compares with other facilities? [LB379]

BOB HOUSTON: Yes. It's one of the lowest in the country. Of those agencies that use the national standards as we do to report it, we're among the lowest in the country. [LB379]

SENATOR ASHFORD: Okay. Senator Seiler and then Senator Christensen. [LB379]

SENATOR SEILER: Okay. This is just to clear up something I'm not sure from different testimony. This...did you say furloughs are only done in Omaha and Lincoln? [LB379]

BOB HOUSTON: Yes. Now, we might have somebody who is at the State Penitentiary whose minimum custody is very possibly waiting to go to the community center but has minimum custody. We have what's called program furloughs, so if somebody's mother passes away and the person is low-custody, they could go to that funeral, given parameters. But 99.9 percent of them come from the Community Centers in Lincoln and Omaha. [LB379]

SENATOR SEILER: Like Hastings is not included in your furlough program that you're talking about in Omaha and Lincoln? [LB379]

BOB HOUSTON: Right. Yes...well, we closed Hastings in 2005. But if it were in

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existence, they would not be included in it. [LB379]

SENATOR SEILER: Well, that explains why the notification is to Omaha and Lincoln. [LB379]

BOB HOUSTON: Primarily. Well, we have five agencies that have requested it statewide. We also notify the Fusion Center. And the...we just...I had to vacate a position and recreate it into a data input position. That person will start training when they get selected and go through our six weeks of training, and then they will...every time people go on furlough, they'll enter that into the system and when they come back they'll enter that in the system. So if a person is pulled over for a field interrogation, for example, and they run that person, they'll know if that person is on furlough. So it takes it right to the street. The notification we give now goes to the gang unit of Omaha police or wherever the law enforcement agency wants it to go to. [LB379]

SENATOR SEILER: Thank you. [LB379]

BOB HOUSTON: Um-hum. [LB379]

SENATOR ASHFORD: Senator Christensen. [LB379]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Director. So if someone goes out on furlough, do you just have an itinerary where they're supposed to be, or do they wear a bracelet? How does that type of stuff work? [LB379]

BOB HOUSTON: Oh, thank you. Every furlough has an itinerary, and when we gave the notifications 20 years ago, or over 20 years ago, we'd give a copy of that to law enforcement and they would know where the person is in the community and they could eyeball them before...you know, when they're with their mother, whoever it might be as their furlough sponsor. Although that practice discontinued, they still have an itinerary. Now when we changed the furlough qualifications, we also changed how we structure furloughs. We have five dimensions of stabilizing factors and those are: employment; a safe place to live, safe for that person, safe for the family that they live with; relationship building; mental health, which includes sex offender; and substance abuse. And so when the inmate used to get a certain number of hours to go out on furlough, and how that's changed is now they have to use those stabilizing factors to build that itinerary. Now a big part of that is that relationship building, because as Minnesota has found and other places have found, that the greater contact that a person has with their family, especially their parents and their siblings, the lower the likelihood is they come back to prison. So it's built specifically for those factors that will stabilize them in the community. [LB379]

SENATOR CHRISTENSEN: Okay. Thank you. [LB379]

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SENATOR ASHFORD: Thanks, Senator Christensen. Senator Chambers. [LB379]

SENATOR CHAMBERS: Since we've gone a bit afield, there are more and more elderly prisoners in the penitentiary now, isn't that true? [LB379]

BOB HOUSTON: That's true. [LB379]

SENATOR CHAMBERS: When I first came to the Legislature I was a much younger man, so if I was much younger that means now I'm much older. And although I'm not afflicted with the infirmities of older people, I'm aware of many who are. And a lot of that is happening because of the kind of sentencing structure that was put in place years ago that kept people in prison far beyond the time when they could be a danger to anybody. Is that more or less true? [LB379]

BOB HOUSTON: During the last seven years, the number of inmates that we have in our prison system over the age of 50 has doubled. [LB379]

SENATOR CHAMBERS: And we almost would have to have...if we're going to give proper care and treatment to those people, what you might call a geriatric wing or ward, because they're going to have problems that are common to that age group. [LB379]

BOB HOUSTON: Yes. [LB379]

SENATOR CHAMBERS: And see, those of us who take seriously our duty to formulate policy will not respond to something that happened in Omaha six months ago and take an action that might continue to produce bad results five decades from now. The people, who in those years--and they were able to overcome opposition--to put lengthy sentences in place are not even here and they don't care about the damage that they have caused and don't even have to think about the inmates. But to those who operate the prisons, those who have to raise taxes and provide adequate constitutionally acceptable care, are having to pick up and clean up the mess. I don't want to leave for others a mess that we created because we were too fearful to do our duty as we know it to be required to be done; react on the basis of a temporary snit that one small element of the public is going through. And that's one of the reasons to the extent that I can prevent it, I'm not going to let the Department of Corrections become the dumping ground for every political would-be career that somebody has by saying stiffer sentences create more crimes and all the kind of things that were done in LB63 in my absence. But I'm going to do some cleaning up because I've got four years this time around, and if I keep my health and I don't lose more than 50 percent of my mental ability--and I'd still be ahead of most people who come to the Legislature--I have eight years in which to undo some damage that was done during the four that I was not here. [LB379]

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SENATOR ASHFORD: Thank you, Senator Chambers. [LB379]

SENATOR CHAMBERS: You're welcome. (Laughter) [LB379]

SENATOR LATHROP: Presumably you're talking about yourself different from any... [LB379]

SENATOR MCGILL: Yes, yes. Other committees. [LB379]

SENATOR ASHFORD: We're not naming names, so anyway. We already did that today. But anyway I don't have anything else, Bob. Thank you very much. [LB379]

BOB HOUSTON: Thank you. [LB379]

SENATOR ASHFORD: Do we have any other testifiers? Okay, Frank and then...or John, I'm sorry. John; Frank...John. John. John, John Krejci. [LB379]

JOHN KREJCI: My name is John Krejci, K-r-e-j-c-i. I live at 4402 St. Paul Avenue. I'm here to oppose LB379. And I kind of apologize and I'm going to agree with Bob Houston. I'm like Senator Chambers; we've disagreed in the past. But I'd just like to underline some of the things he said. Greetings to my senator and to Senator Ashford. We've got an overcrowding problem; this bill would exacerbate that. There's been 1,600 furloughs over the last 20 years, very few problems that we have said. The recidivism rate in Nebraska is, like, 25, 28 percent. Nationally, it's something like 60 percent. Furloughs work. If it ain't broke, don't try to fix it. And political posturing is not good public policy, you know, whatever that means. Now I see, whatever my time I have, Mary Waltermeyer, who has been directly impacted by this incident and then by this bill, is going to come and talk to you. I mean, this is where the rubber hits the road. I'm done. [LB379]

SENATOR ASHFORD: Thank you, John. And for the record, you did not support LB63 either, I recall. [LB379]

JOHN KREJCI: I don't remember but I'm... [LB379]

SENATOR ASHFORD: I do. [LB379]

JOHN KREJCI: I'm Senator Chambers' age and I think I've lost half of mine. [LB379]

SENATOR ASHFORD: I do. I do remember. Thank you, John. Next... [LB379]

JOHN KREJCI: Mary. [LB379]

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SENATOR ASHFORD: Next opponent. Thanks. [LB379]

MARY WALTERMEYER: (Exhibit 7) My name is Mary Waltermeyer, W-a-l-t-e-r-m-e-y-e-r. And I have submitted to you, my husband Andrew Westling, his statement. I did bring it along to read it but if I'm on a time limit I won't probably be able to. I am a former diversion officer responsible for teaching accountability to first-time juvenile offenders and I'm married to an inmate. Our justice system is centered around accountability. The correctional system operates on the same basis. Do good and good things happen; break the rules and suffer the consequences. If LB379 is about practicing accountability, it's flawed. First, the reward or punishment should remain consistent not only in frequency but also for everyone regardless of the offense. This bill seems to imply that someone with a weapons charge is more dangerous to our society. Tell that to the parent whose son or daughter was killed by another driver who lost control of their car while under the influence of meth. Poor choices can be made by everyone and anyone. Everyone should be held to high standards regardless of their offense. Accountability should not stop with the inmate. We need to look at all the stakeholders in the process. All stakeholders should be held accountable to increase the effectiveness of the system and the safety of our communities. I'm here today because I'm a stakeholder. I'm a registered sponsor at the Community Correctional Center in Lincoln. I want to be held accountable because it will improve Andrew's chances to succeed. When Andrew entered the community corrections phase of his sentence, he earned the privilege to attend church in the community. He was placed on work detail, and then work release, to prepare for successful employment. He was granted 12-hour furloughs and 4-hour passes. Both passes and furloughs are authorized absences from the institution while not under state escort. While on a furlough, a family member steps forward to become a sponsor. As a sponsor, I applied and was approved by prison personnel. I signed an agreement to follow the rules and guidelines set forth by the Corrections Department, and Andrew submits an itinerary of activities planned during the time away from the center. The paperwork includes details of where we are going, when, and contact information. I must remain with Andrew at all times. The written approved itinerary is signed by both Andrew and myself at the time he is released into my custody. When Andrew returns to the Community Center, he can be subjected to a drug screening, and searched. Any receipts or proof of the activities must be submitted, and this is done routinely. I believe LB379 is being proposed because of the tragic event that took place last fall when an inmate was confronted by law enforcement in Omaha while on a furlough. When I read about the incident, the first question that came to mind was, where was his sponsor? I realize that my light has flashed to red. Can I finish? I am just about done. [LB379]

SENATOR ASHFORD: Yeah, if you could sum up quickly. [LB379]

MARY WALTERMEYER: Where was his sponsor? I have to ask, did his sponsor follow

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proper protocol? Following that event, the process to receive a furlough was altered. Restrictions were made and my husband was no longer granted furloughs. His progress has slowed but by no misconduct of his own. I am here today to urge this committee to not move LB379 forward. I would encourage you to stay centered and focus on accountability. Follow the core guidelines. Be fair, be consistent, and include all the stakeholders. If you want to have real change happen, focus on the sponsors. If a sponsor felt they could be held legally responsible for their family member while in their custody and there was any doubt about that inmate's integrity, that sponsor will not come forward. I am confident in Andrew's behavior and his ability to make good choices. We may see a reduction in pass and furlough requests, and perhaps the number of people who want to become sponsors as well; but those furloughs that are granted will be for quality home visits, activities that promote healthy recreation, and networking for employment and educational opportunities. Furloughs are an important ingredient... [LB379]

SENATOR ASHFORD: I think...time out. I think...I just have to ask you. Sorry to do that. [LB379]

MARY WALTERMEYER: That's all right. [LB379]

SENATOR ASHFORD: Just if you would, I think we get the gist of what you're saying and I appreciate your testimony very much and there may be some questions. [LB379]

MARY WALTERMEYER: Okay. [LB379]

SENATOR ASHFORD: Does anyone have any questions? I don't see any, but thank you. And you have something to submit, right, to us? [LB379]

MARY WALTERMEYER: And it is submitted to you. Yes. [LB379]

SENATOR ASHFORD: Okay, we already have it. Thank you very much. [LB379]

MARY WALTERMEYER: All right. [LB379]

SENATOR ASHFORD: Okay. I think this is...we have the last...maybe the last opponent. [LB379]

CHARLES FRENCH: (Exhibit 8) My name is Charles French, C-h-a-r-l-e-s F-r-e-n-c-h. I'm a father of an inmate that's at the Omaha Correctional Center. Excuse me for my nervousness, I've never done this before. But this is a letter my son wrote to me in response to LB379, and he entitled it Without Hope. "My name is Joshua French. I am currently an inmate in the Omaha Correctional Center. I would like to begin by thanking you for taking the opportunity to read this appeal in regards to LB379. I am offering my

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story, which includes my crime, who I was before the terrible incident, and my future goals. Hopefully, I can convey to you that work release and furlough opportunities play a crucial role in helping me become a self-sufficient, focused man again upon my release. There is room for compromise in this bill and a solution that will satisfy both the interest of public safety and rehabilitation of the inmate population. I am greatly ashamed of my actions on March 27, 2011, and wish more than anything that I could change the outcome of that piece of my life. On that weekend, my girlfriend and I had an argument, and I told her my plans were to spend that weekend at my parents' house. I spent that Saturday night out with my friends, and after drinking too much, made the first of many mistakes that night. I decided to drive over to her house instead of walking two blocks home to my parents' residence from the bar. When I arrived at her house, I found the front door ajar with her keys still in the door knob, which struck me odd. I walked in the house, upstairs, and found...into the bedroom and found her in bed with another man. I was enraged and felt so betrayed, and my emotions exaggerated by alcohol, and reacted wholly inappropriately and out of character. I assaulted both of them, and after my girlfriend's lover ran out of the house, I took my handgun from the night stand and discharged rounds into the house. I am deeply ashamed to admit these facts and will be for the rest of my life, be convicted of a use of a firearm to commit a felony, terroristic threat, and attempted felony assault. I am serving a six-year sentence with a mandatory five years for use of a firearm, and I've almost served one year to date. I vow to learn from my mistakes and spend the next chapter of my life making up for the wrongs I have committed. Before this incident, I lived a life that I was proud of. My calling was always to serve. By 17, I was an Eagle Scout and joined the Army National Guard in 1998. I served for 13 years, deployed to Bosnia in 2002, and later graduated from Officer Candidate School and commissioned as an officer in 2007. I completed Flight School in 2009, and returned to Nebraska as an OH-58 pilot to serve as the Flight Operations Officer in the Aviation Support Facility in Grand Island. I accomplished a good deal in that position, and also as the Aviation Maintenance platoon leader for the company. My supervisors can attest to who I really am as shown in my Office Evaluation Reports and character letters. Had I not made that one significant error in judgment, I would likely be commanding an aviation company today. My focus now is using the tools I have to make positive changes to better shape the future of my life and serve the greater good, starting again now." There is another page so, and my light came on. [LB379]

SENATOR ASHFORD: But I think you have given us a good sense of your testimony and also we have this information, Mr. French. So thank you. Do we have any questions of Mr. French? I don't see any. Thank you, sir, very much. [LB379]

CHARLES FRENCH: Thank you, Senators. [LB379]

SENATOR ASHFORD: Thank you. Thank you for coming down. I don't...any neutral testifiers? I don't see any. John, do you wish to close? [LB379]

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SENATOR NELSON: I will waive closing. [LB379]

SENATOR ASHFORD: (See also Exhibits 9, 10, and 23) Okay. Thank you. And that will conclude the hearing on LB379 and we will now go to Senator Nelson again. [LB379]

SENATOR MCGILL: All right. It looks like our next bill is also from Senator Nelson: LB374. Welcome. [LB374]

SENATOR NELSON: Thank you, Senator McGill, Second Vice Chairman. [LB374]

SENATOR MCGILL: Vice Vice Chair of the Judiciary Committee. [LB374]

SENATOR NELSON: (Exhibit 11) Good afternoon, Senator McGill and members of the Judiciary Committee. My name again is Senator Nelson, John Nelson, spelled N-e-l-s-o-n. And I represent District 6 in midtown Omaha. And I am here today again appearing this time to introduce LB374. Last session the Unicameral passed legislation authorizing courts to deduct fines and costs from bail bonds posted by criminal defendants. That legislation is codified in Chapter 29 of the Nebraska statutes and can be seen in this bill, LB374, on page 3, in Section 2(3). As an extension of that law, LB374 will allow courts to deduct child support and medical support in arrears from bail bonds. And let me stop here. That's kind of a term of legalese--in arrears--which really means delinquent child support and medical or what we would call back child support and medical support that are owed. I'm first going to explain why this bill makes sense from both a policy and a legal perspective, and then I will explain the proposed amendment that you have. First, this bill addresses the imbalance that occurs when a criminal defendant owes delinquent child support but still manages to post bond. LB374 effectively says that if a defendant is not paying a child support or medical support obligation but still finds a way to post bond, even if a third party provides the funds, that money will be subject to a lien for child support or medical support in arrears. LB374 also requires the appearance bond form to provide notice to the person posting bond that the money will be subject to a lien for back child support. Secondly, the bill clarifies the current statutory framework governing bail bond money and liens pursuant to child support orders. On the one hand, our statutes provide that all orders for payment of money shall be liens on any personal property registered with any county office, which presumably could include bonds. Our statutes also say that child support or medical support orders may be collected by filing a garnishment on any property of the debtor, which again presumably could include bonds. However, our statutes are also clear that after bond is posted and the defendant satisfies all court appearances, the clerk shall retain 10 percent of the bond and the remaining 90 percent must be returned to the defendant. Indeed there's a recent case by the Nebraska Court of Appeals where it ruled that unless our statutes authorize a setoff, quote unquote, bond money must be returned to the defendant. LB374 authorizes such a setoff for delinquent child support or

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medical support balances. Finally, I've provided the committee with a proposed amendment to Section 3 of LB374 which makes it more clear that we are not requiring courts or their staff to determine whether every single person who posts bond also owes delinquent child support or medical support. Rather, bonds will merely be subject to a lien for these delinquent amounts if proper affidavits are attached. Those affidavits must include important details, including the case number of the original court order for child support or medical support, and the amount of the present delinquency. After the court deducts other assignments, fines, and costs from the bond, then the clerk must withhold part or all of the remaining amount to satisfy the current child support delinquency. The money will then be sent to the State Disbursement Unit, which is the Nebraska Child Support Payment Center in Lincoln. The payment center processes all child support payments in Nebraska and will distribute the support to the proper parent or guardian. To sum up, LB374 establishes good policy and clarifies our statutes. The proposed amendment better accomplishes the bill's intent. If we need to further consider details of this amendment, then I'll be more than happy to work with the committee going forward. And with that I will answer any questions. [LB374]

SENATOR MCGILL: Thank you, Senator Nelson. Senator Seiler. [LB374]

SENATOR SEILER: Senator Nelson, I'm talking about paragraph...or in your amendment, line 10 and 11. I don't see where the state of Nebraska is listed there. Yeah, "A county attorney, authorized attorney, or interested person." I'm wondering if maybe we ought to insert the "state of Nebraska" there, because they have liens for child support. [LB374]

SENATOR NELSON: Yes, I would accept that, although I might ask who else but the county attorney would enforce that? [LB374]

SENATOR SEILER: They have their own enforcement group. [LB374]

SENATOR NELSON: The enforcement of the Attorney General's Office? [LB374]

SENATOR SEILER: Well, I think they are attached to the social services department. [LB374]

SENATOR NELSON: Okay. But that might come under authorized attorney, I believe, at least under this statute. [LB374]

SENATOR SEILER: Well, they are not always attorneys there. [LB374]

SENATOR NELSON: All right. I'll be glad to work with you on that and add that in on line 11. [LB374]

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SENATOR SEILER: Okay. [LB374]

SENATOR MCGILL: Senator Davis. [LB374]

SENATOR NELSON: Yes, Senator. [LB374]

SENATOR DAVIS: Senator Nelson, I understand your...I'm just as upset as you are about child support. We discussed that the other day. But I'm wondering if this bill, if it's adopted, isn't just going to incarcerate someone because they're not going to be able to get any bail money. And if that's the case, that's going to drive costs for the counties and cities. Can you elaborate on that? [LB374]

SENATOR NELSON: You have a low voice, Senator, but if I heard you correctly you said that this may cause someone to be incarcerated? [LB374]

SENATOR DAVIS: Well, if they're not able to get a bail bond they're going to be incarcerated. [LB374]

SENATOR NELSON: Well, the assumption here is that they've been able to post bond, and so I don't know that that has anything to do with their possibility of incarceration. Either they have to come up with the bond to appear...it's an appearance bond where they say, yes, I've been charged, I admit that. But I'm going to come up, I will appear to face the charges; and if there is some possibility I might not, the court may impose a bond, and it could be \$100, it could be \$500, \$1,000, depending on the seriousness of the offense. So what we're saying here is if a bond is posted...if they can't post the bond, yes, they may go to jail, if I understand your question. But here they've posted the bond one way or another, and after court costs are taken out and maybe an attorney's lien which got in there first or something like that, then if there's delinquent child support and there are affidavits to support that, then the remainder of that money can go toward this delinquent child support, which is important not only from the standpoint of wives and children, spouses and children that need that money, but also from the state of the county itself that's advanced money to those dependents because the support payments are delinquent. Does that answer your question? [LB374]

SENATOR DAVIS: Yes. [LB374]

SENATOR NELSON: All right. Thank you. Senator Chambers? [LB374]

SENATOR CHAMBERS: I can understand what's being attempted here. But I have my own views of how the criminal justice system combined with the court system should and should not be utilized, and I don't think that a part of that system should be designed to collect child support. And I'm going to take the question that Senator Davis asked a bit further. What bondsman, in his or her right mind, would post a bond if

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money will be taken out to pay child support? No bondsman would. So that person then cannot get out and this is a way of effectively making sure that somebody who was arrested stays in jail even if the charges wind up being dropped as totally ungrounded. Isn't that the way it would work? [LB374]

SENATOR NELSON: The only thing that crosses my mind, Senator, I'm not sure that there are still bail bondsmen that operate anymore, are there? [LB374]

SENATOR CHAMBERS: Well, I know people who will put up bond for people. They may not be called a bail bondsman. [LB374]

SENATOR NELSON: Yes. All right. [LB374]

SENATOR CHAMBERS: I'm trying to use a term that people know. There are third parties who post bond and there are sometimes family members, there are friends, there are others who do that. And you specifically mentioned third parties, don't you? So you know that somebody other than the accused is going to post bond under the circumstances right now regardless of how they're labeled. And if that third party knows that the money is going for child support, that person is not going to post a bond. And the person then who's accused, stays in jail. Isn't that correct? [LB374]

SENATOR NELSON: Well, Senator, if it's a family member that's really concerned about keeping them out of jail, and maybe this is where Senator Davis was going, I suspect that that would be the primary motivating factor to post the bond, just to do that, even though they might know it would have to go for child support. [LB374]

SENATOR CHAMBERS: It's not just a family member who does this, and it's not for us to second guess what's in somebody's mind when they post bond for an individual. [LB374]

SENATOR NELSON: That's true. [LB374]

SENATOR CHAMBERS: This I think is an inappropriate use. I'm just making those who are here know it's a clever attempt, and for all that they're trying to do I'm very much opposed to this approach. [LB374]

SENATOR NELSON: All right. Thank you. [LB374]

SENATOR ASHFORD: Yes. Senator Seiler. [LB374]

SENATOR SEILER: Let me see if I can clarify this a little bit. The purpose of this is at the time the bond is dismissed and the person is either out of jail or he's been shipped to the federal penitentiary or state penitentiary and the bond is now being released by

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the court, at that point the lien comes into play and it's not a keeping the person in jail because the bond isn't issued. The question that the court is going to be faced with is who put up the bond and who has the right. But they've clarified that in recent years, that if it's a third person you cannot attach to that lien on that property; but if it's the individual, the criminal, then liens can be attached to that and it can...credit companies can come in only after the court has dismissed the bond. [LB374]

SENATOR CHAMBERS: I'm aware of that. But who's going to put property--if they put up property--at risk, knowing. See, the person could feel that this person did not commit the crime. So it's not going to be always where the person is shipped to jail--I meant, to prison. [LB374]

SENATOR SEILER: Right. But the lien does not attach if you put up the money in your name. When it's dismissed, the money is paid back to you, not to the person that was incarcerated. [LB374]

SENATOR CHAMBERS: But if it's for that person, then...let me see from Senator Nelson if I'm understanding this. Is there a place in here where it says a person...the person puts it up, or a third party? Because I thought for sure I read that somewhere in here. If a "person other than the accused who posted the bond." [LB374]

SENATOR NELSON: Yes, that's on line 3 there of Section 1. [LB374]

SENATOR CHAMBERS: And that person will be notified that "the sum deposited as bond is subject to a lien under section 3 of this act for any delinquent child support payments owed by the accused." Now does subsection (3) say, as Senator Seiler did, that this money is not going to be subject to this lien under the circumstances that I've mentioned? [LB374]

SENATOR NELSON: No, (3) does not change that. It just...it involves notice and affidavits from someone that wants to collect on the lien. So this would... [LB374]

SENATOR CHAMBERS: And they could collect it from the third party... [LB374]

SENATOR NELSON: Yes. [LB374]

SENATOR CHAMBERS: ...or whoever posted the bond, in other words? [LB374]

SENATOR NELSON: That's the way the statute... [LB374]

SENATOR CHAMBERS: Whatever is posted is subject to this bill. And whether they appear, whether the charges are dismissed, but whatever results in the release of that bond in whatever form can then be attached to get those delinquent child support

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payments. Is that true or false? [LB374]

SENATOR NELSON: That's what we say in the bill. [LB374]

SENATOR CHAMBERS: And if a person did not want his or her assets or money in whatever form to be subject to that, then that person is not going to... [LB374]

SENATOR NELSON: Probably not. [LB374]

SENATOR CHAMBERS: ...expose it to that problem. [LB374]

SENATOR NELSON: Probably not. [LB374]

SENATOR SEILER: I don't see how you can attach somebody else's property. [LB374]

SENATOR CHAMBERS: Well, you're looking at what this bill says can be done. [LB374]

SENATOR SEILER: I was looking at paragraph 18 on the return of the bond to an accused person--line 18. [LB374]

SENATOR CHAMBERS: Well, anyway, I won't argue it here. He and I will go round and round on this later. [LB374]

SENATOR SEILER: No. I see what you were talking about, but I don't think that can be done. [LB374]

SENATOR CHAMBERS: Oh, you mean even though it's in the bill you don't think it can be done. [LB374]

SENATOR SEILER: No. I think the court wouldn't enforce that. [LB374]

SENATOR CHAMBERS: Oh, then we're probably on the same wavelength. [LB374]

SENATOR SEILER: Right. [LB374]

SENATOR CHAMBERS: Because in terms of what can be done with this third party's... [LB374]

SENATOR SEILER: I think we are. Right. [LB374]

SENATOR CHAMBERS: Okay, okay. [LB374]

SENATOR SEILER: And if it's in there, it needs to be stricken. [LB374]

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SENATOR CHAMBERS: Okay. [LB374]

SENATOR DAVIS: So, Senator Nelson, would you be willing... [LB374]

SENATOR NELSON: I don't know who's running this... [LB374]

SENATOR DAVIS: ...to add language that says if it is the personal property of that particular individual, it can be attached? [LB374]

SENATOR NELSON: If it's...yes. [LB374]

SENATOR DAVIS: Rather than...so we can take care of this third party aspect? I mean, that's my concern is that you're going to end up with no bond available. [LB374]

SENATOR NELSON: You would...yeah, right. In favor of that change, then. All right, thank you, Senator. [LB374]

SENATOR ASHFORD: Thanks, John. I don't see any other questions. Okay, proponents; those for the bill. Any opponents? [LB374]

CHRIS EICKHOLT: Sorry. I thought there would be proponents for sure. Chris Eickholt appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. First name is spelled C-h-r-i-s, last name is E-i-c-k-h-o-l-t. Our organization decided to be opposed to this bill. Now I don't profess to be an expert in this. The last time I ever looked into liens is when I was committee counsel to this committee because I just practice criminal defense law. But there is a current process in Chapter 43 that allows the state, the county attorney acting on behalf of the state, to enforce delinquent child support by attaching these to people's posted bonds. The bill seems to put the court itself that sets the bond in the criminal case...whether it's a county or a district court case, it seems to put the court in that role of making sure that the money is collected, if you will, to pay the back child support. And we're opposed to that specific part or specific consequence not only for the reason that Senator Chambers mentioned, and that is if a person, a family member, a boss, or someone is not going to post a bond, if they're given a piece of paper or some notice saying you're not going to get this back, and those people remain in jail. And anyone representing somebody charged with a crime would prefer to have that person out of custody. The purpose of a bond is so if somebody sort of invests, if you will, or puts money up for the case with an understanding they're going to get it back, so they appear on that case. If they get their bond posted by anybody and they know they're not going to get it back, there is no incentive whatsoever for them to ever appear in the criminal case, other than avoiding arrest. But another consequence that could be a result from this bill, if you look at Section 3--and I know there's an amendment for it but I have not seen it--but Section

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3 of the bill requires that before the bond is released, the judge or magistrate has some sort of a hearing or determination. And I'm looking at page 3, lines 23-25, and then the top or the remainder on the top of page 4. The court apparently on its own motion with some sort of process that's really not stated in the statute...or in the proposed bill, has some sort of a hearing to determine whether child support is owed and how much is owed. And it puts the court that sets the bond in the criminal case, county or district court, in almost a role as an adversary against the defendant at this point. A concern we have is that when the court, if it does this for a while, is setting the bond to begin with, there may be that inquiry or search for what sort of child support is owed on this particular defendant, and that will factor in somehow on how much the bond is set, and not necessarily because of the charge or not necessarily because the person is a flight risk or anything like that, but instead it becomes sort of an up-front child support collection step to require a person to post whatever they owe for child support, to make sure they come back, and not necessarily what they owe on the case. And for those reasons we are opposed to it. And I think the amendment sounds like Section 3 sort of tries to get the judge out of the enforcement provision. But I haven't seen the amendment, as I said before. [LB374]

SENATOR ASHFORD: Senator Seiler. [LB374]

SENATOR SEILER: Am I correct that if a third person posts a bond, that the judge will give it back to that third person and not attach a lien, even an attorney's bill. But if the person himself puts the bond up, then it is subject to garnishment and a lien... [LB374]

CHRIS EICKHOLT: There are ways... [LB374]

SENATOR SEILER: ...and the attorney's fees come out of that too. [LB374]

CHRIS EICKHOLT: I work in the public defender's office so I never really help my clients...I never help my clients post money in the bonds. But, at least in Lancaster County, the judge typically sets a percentage bond--for instance, a 10,000 percentage and they have to post 10 percent to be released--there is a way that a third party can protect whatever rights they have by executing a surety bond where they post the full amount, and then it is considered and presumed whatever person posted the bond. [LB374]

SENATOR SEILER: Well, the way they protect them in our area is by putting in the name of that bond, the third person. [LB374]

CHRIS EICKHOLT: That's right, and some... [LB374]

SENATOR SEILER: And it doesn't lose its characteristics of the ownership of the third person. [LB374]

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CHRIS EICKHOLT: That's right. A person who is sophisticated, a family member or somebody who sort of knows lien authority, maybe if somebody owes child support, can post a bond and maybe immediately file their own lien and to sort of be first in time. [LB374]

SENATOR SEILER: Okay, we're in agreement. We're in agreement. Thank you. [LB374]

CHRIS EICKHOLT: But I'll tell you, a lot of my clients' families and whoever posted bonds are just unfamiliar with that. They find out the hard way when they go to collect the bond and the state has put a lien for child support on it. [LB374]

SENATOR ASHFORD: Okay. I don't see any other questions. Thank you. Any other opponents? Neutral? [LB374]

RICHARD GRABOW: Thank you, committee. My name is Richard Grabow, and it's spelled...my last name is spelled G-r-a-b-o-w. I am a Deputy Lancaster County Attorney here in Lincoln, Nebraska. I'm going to mainly just offer up some history as to what we do in our county on this sort of matter. Starting around ten years ago, as I've been told--it's before my time in the office--we began to notice, because we have the dual purpose in our county of being the child support enforcement agency, as well as the criminal prosecution office, we began to notice that individuals who were thousands of dollars behind in paying child support were able to procure money to post bonds to allow themselves to get out of incarceration pending their criminal charges. That thing created a process that we kind of, I guess, came up with in which we started filing affidavits of liens in the criminal cases, asserting that money was owed in a separate child support case. We would wait for the criminal case to end. We would then, immediately upon completion of the criminal case, file a garnishee summons with the clerk of the district court or clerk of the county court and garnish the money that would have been owed to the criminal defendant. If you fast forward, obviously Senator Nelson referenced the State v. Zamarron case. That was the Court of Appeals case that he had made mention to which essentially said that--and I'm paraphrasing here--that a criminal defendant's bond posting, it's his money upon completion of all the orders to appear. In light of that and in light of the fact that there was dicta in that case that essentially indicated that no parties could assert liens on bond money, there became a question of whether or not...or what exactly the status of the law was on that. Hence this bill, and hence a hopeful clarification of that. To address some of the other questions that were addressed to Senator Nelson, I believe in Adams County, for example, Senator Seiler, I believe the state has attorneys that work there, it is my understanding, and they are called...I believe fall under the heading of authorized attorney, which is actually defined in a separate statutory section. I understand Senator Chambers' concerns regarding just the policy behind the matter. One thing that we hope everybody can be cognizant of is

that it's...there's a part of this that's hard to understand when people are thousands of dollars behind in child support and the only time they can get money from their relatives is when it's to get their own selves out of jail and not to give money to their children. The way the whole child support system works is when people aren't paying child support, it's more likely they're going to be on public assistance. So when they're not paying the child support, it increases the odds that their child is going to be using public assistance benefits. And so we look for any way we can to try and collect money to hopefully reduce the reliance on the public assistance system. [LB374]

SENATOR ASHFORD: Senator Chambers. [LB374]

SENATOR CHAMBERS: I think this, by analogy, touches on what Senator Seiler said, or I think it was the criminal defense lawyers' representative factoring in what might be owed for child support and setting the initial bond amount, not thinking about ensuring that the person will show up, not considering the person is not a flight risk, but this is a way to get some child support money. This shows the kind of inherent, if you want to call it that, conflict when you have a prosecutor's office enforcing child support collection, because then that prosecutor is going to cut corners, use stratagems, and misuse, in my view, the power that that prosecutorial office gives to do something else to get money that the prosecutor shouldn't even have any interest in trying to collect. So maybe the thing to do is to take the county attorneys office out of the child support collection business. And I'm concerned about children being taken care of and people who bring children into the world paying for them; but I'm also concerned about the criminal justice system being used for something other than to achieve the ends of justice. And I think when something is put...a burden is put on the bonding procedure, then I think the system is being skewed and even perverted. You would not try to go after that money in the way you did out of the goodness of your heart. As just a prosecutor, if that's all you were doing, that would be somebody else's bailiwick and you wouldn't have had to come up with this stratagem that a court, mindful of justice, said you cannot do that. This is not the way the system operates. And so maybe the Legislature makes a mistake by farming these things out, and that's why they need more people like me in the Legislature. There is such a thing as integrity and purity which cannot be maintained when we put two hats on a person. Now I'm not saying you're a crook because you tried to figure a way, under hat A, how to carry out the duties under hat B. The way I'd described it, a person cannot ride two horses going in opposite directions at the same time. And people who are religious, like you guys who want to pray every morning, a man cannot serve two masters. But that's what the county attorney is being asked to do, in my opinion. And even if the end being sought is good, the end does not always justify the means. And I go into this bit of explanation so you won't think I'm in any way impugning your integrity as a lawyer or saying that you're a crook. But I think the system creates a situation that makes it difficult for a person to do what his or her main responsibility is because he or she is looking out the corner of the eye at this other responsibility that is put on that person at the same time. So I hope

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after what I have said, you know I'm not saying that you're a bad person. [LB374]

RICHARD GRABOW: No offense taken. May I address your point, Senator? [LB374]

SENATOR CHAMBERS: Sure. [LB374]

RICHARD GRABOW: Just a couple things. In regards to the potential conflict you referenced, I can only speak to how it's handled in my county. In Douglas County they have a separate contracted agency that enforces child support, and then they have obviously the Douglas County Attorney. In our office we do both functions. The child support agency, or a part of our office for what it's worth, is (inaudible) at an off-site location. Some of our child support staff have completely different e-mail addresses, things of that nature. Furthermore, just to highlight the hypothetical, I guess I'll call it, that you referenced in terms of the two sides of the office working together on requesting a bond, number one, we wouldn't be able to work with the judge on that. The judge still would have an opportunity to hear from the defendant's attorney as to the level the bond should be placed at. Secondly, your whole hypothetical is based on an assumption that we would in some way know the financial resources of the defendant, and there's just as likely a possibility that we're going to gauge...under your hypothetical, that we're going to gauge in our heads, well, this guy might only be able to post \$1,000, don't ask for \$5,000 because we want to get \$1,000 in child support, thereby lowering the amount that we would typically ask for. I think the...I appreciate the concern. I don't think in practice that that's typically what happens, and I can even tell you based on the statistics I have that in 2012, in my county, roughly \$108,000 was collected doing this. And so to speak to Mr. Eickholt's concern, I don't see...or at least I look at these numbers and don't see that there's a big chilling effect on the posting of bonds. When it comes right down to it, from my experience enforcing child support, is that usually until you put somebody's liberty at risk there's a lot that they will put up with before they will pay. But about the time that the keys are taken away and the jail cell is closed is when all of a sudden the money comes out. And so that's part of what...that's just...I'm speaking just generally that's what I have experienced in my time. [LB374]

SENATOR CHAMBERS: Could it happen though the way I described it? [LB374]

RICHARD GRABOW: In terms...which description? [LB374]

SENATOR CHAMBERS: The very things that you said would not happen in your county; could they happen? [LB374]

RICHARD GRABOW: You know, anything is possible, I suppose. [LB374]

SENATOR CHAMBERS: And I look at what could happen, because not everybody is as upstanding as you and everybody who currently you are working with would be at this

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time. [LB374]

RICHARD GRABOW: Understood. [LB374]

SENATOR CHAMBERS: And that's all that I have. [LB374]

SENATOR ASHFORD: Thank you. Senator Seiler and then Senator Coash. [LB374]

SENATOR SEILER: Just have a quick note. The timing of everything, of the setting of the bond, occurs long before anybody has filed a lien or is about to file a lien, because you don't even know he's been charged with a crime at that point. [LB374]

RICHARD GRABOW: Well, in our office we would know. We get what's called a jail list which shows the individuals that are currently lodged into the facility. And we don't... [LB374]

SENATOR SEILER: Then it is possible. [LB374]

RICHARD GRABOW: And so it is possible. And then... [LB374]

SENATOR SEILER: In their office. Not in the one we deal with. [LB374]

RICHARD GRABOW: Correct. So there are situations in which that could occur that we would know. Again though, the big assumption there is that we're going to know that this person that's been lodged in for some felony matter is going to have certain financial resources. If we had that knowledge, we would have gotten to them long before the jail did. [LB374]

SENATOR SEILER: And then one other thing you said is his, the defendant's money, that would not apply to a third person's money. [LB374]

RICHARD GRABOW: Well, I think as the way this bill is written, it would apply to third persons. [LB374]

SENATOR SEILER: Well, I understand. But that...is your judge going to follow that? [LB374]

RICHARD GRABOW: I can tell you from our experience that we have routinely won on that issue where a business owner who has an employee who he's got to get out of jail to work on that big project or a mother or whatever. [LB374]

SENATOR SEILER: But if the bond stays in the employer's name? How do you get that...take that away? [LB374]

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RICHARD GRABOW: It depends. It depends on the judge. We've got eight district court judges, seven county court judges, and it can vary from judge to judge. I think there's some...I think, really and truly, the law is lacking some clarity on that point, for what it's worth. That's been my experience at least. [LB374]

SENATOR ASHFORD: Yes, Senator Davis. [LB374]

SENATOR DAVIS: And I just want to follow up with that a little bit. So some judges will say, even if it's in the employer's name, it belongs to the person who's been charged? [LB374]

RICHARD GRABOW: Yeah. And I could be wrong on that. What I'm about to say I could be wrong because I'm going from memory, but I believe in my county, for example, there's a form and I believe it might have even been approved by the courts administration, that essentially says if you're posting this money, you're posting it in the name of the criminal defendant. But I could be wrong on that. I don't...much like Mr. Eickholt, I don't assist people in posting bonds, so I'm going from memory on that. [LB374]

SENATOR DAVIS: Hmm. [LB374]

SENATOR ASHFORD: Senator Coash. [LB374]

SENATOR COASH: Thank you, Senator Ashford. Boy, you wait long enough, you get a lot of your questions answered. But you stated last year Lancaster County collected about \$108,000 through these bonds that got diverted back to the child support enforcement. [LB374]

RICHARD GRABOW: About \$108,000. I will say that it's possible that a small chunk of that was through other types of garnishments, but I'm guessing roughly 95 percent was through bond garnishments. [LB374]

SENATOR COASH: Was through bond garnishment. And then there was an Appeals Court case Senator Nelson mentioned that...so some of...what...so somebody appealed that and it went up, and then the Appeals Court said, no, you're not allowed to do that anymore? [LB374]

RICHARD GRABOW: Well, no. The Court of Appeals case, State v. Zamarron, essentially dealt with a court that had ordered fines and court costs to be withheld from a bond deposit. And that was appealed by the criminal defendant and the court ruled that under the statutes that you could not do that. Essentially, what they interpreted 29-901(3)(a) to do is say that upon completion of all the orders to appear in the criminal

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case, the bond deposit less the 10 percent fee for the clerk is to be returned to the defendant, no setoffs included. [LB374]

SENATOR COASH: All right. And that was a case that just happened last year? [LB374]

RICHARD GRABOW: Oh, I think it was November 2011. [LB374]

SENATOR COASH: Because I passed the bill allowing for that and I wonder if it was my bill. [LB374]

RICHARD GRABOW: Yes, I believe you did the court costs bill. [LB374]

SENATOR COASH: So that got thrown out. Okay. [LB374]

RICHARD GRABOW: No, no; I'm sorry. Your court costs bill was in response to that case. [LB374]

SENATOR COASH: It was in response not because of that case. [LB374]

RICHARD GRABOW: Yes. [LB374]

SENATOR COASH: Okay, good. And then so since that case came down, Lancaster County, they've stopped? [LB374]

RICHARD GRABOW: We're continuing to do it because we still believe, and I think even Mr. Eickholt referenced it, that there is some statutory authority to continue what we're doing. We'd like it clarified though, in the event that it's ever challenged successfully. To this point it hasn't been challenged. It's been challenged and not successfully at this point. [LB374]

SENATOR COASH: Okay. And then to...I just want to make sure I heard correctly in your answers to Senator Seiler. Out of that, all of those garnishments you did in last year that got you to \$108,000, some of those were posted by the defendant, but some of those garnishments that you were covering were actually posted by someone else? [LB374]

RICHARD GRABOW: And I couldn't tell you how much but I know from my own experiences. [LB374]

SENATOR COASH: But your own experience would tell you that it was court-specific. In other words, some judges would allow you to put a lien on that bond and other judges would say no. Is that...was that your experience? [LB374]

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RICHARD GRABOW: Right. [LB374]

SENATOR COASH: Was that your experience? So there's some... [LB374]

RICHARD GRABOW: Yes, with some... [LB374]

SENATOR COASH: ...lack of consistency within the court? [LB374]

RICHARD GRABOW: Yeah. I want to clarify that a little bit though. When we run into problems as the enforcing agency when we're trying to garnish this money is when a party who has put up the money has also written themselves in as an assigner...they've received an assignment of the bond money. Sometimes the courts have viewed that as essentially having priority over any lien or any attempt we have to garnish. So that's the way it usually comes up. Typically, if there isn't something in writing on the bond paperwork, we really don't have any way of knowing who's put it up. [LB374]

SENATOR COASH: Right. And if it's the defendant's counsel who put it up...or not put it up, but if the defendant's counsel...let me back up. If the defendant's counsel is owed attorney's fees, you got second position behind them usually, I'll bet, right? [LB374]

RICHARD GRABOW: It's going to depend on the judge. I don't know that that issue has really been completely fleshed out either, so. [LB374]

SENATOR COASH: Did that happen though where you want...or the child support wants some of that bond money but the attorney says no, wait, I've got some fees here and I promised the guy that I would just take his fees out of the bond he posted? [LB374]

RICHARD GRABOW: Yeah, I know it's happened. I can't speak offhand to what the result of any litigation was, and I think it...again, it's differed on the judge, so. [LB374]

SENATOR COASH: Well, that answers my questions. Thank you. [LB374]

SENATOR ASHFORD: Senator Chambers. [LB374]

SENATOR CHAMBERS: So you had Senator Nelson bring this bill? [LB374]

RICHARD GRABOW: I didn't personally. I think I went...and I'm guessing it came from me. I proposed it to some people I know who I think got it to Senator Nelson. [LB374]

SENATOR CHAMBERS: When you say people you know, that sounds almost like the mob we know...(laughter). [LB374]

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RICHARD GRABOW: I don't know those people, Senator. [LB374]

SENATOR CHAMBERS: But did the Lancaster County Attorneys Office have this bill initiated? [LB374]

RICHARD GRABOW: Not officially, no. [LB374]

SENATOR CHAMBERS: Well, unofficially? [LB374]

RICHARD GRABOW: Not in any form. [LB374]

SENATOR CHAMBERS: You choose your language carefully, so I'm listening very carefully. So what role did that office play in having this bill written? Did you participate, or your office, in the drafting of the language in this bill? [LB374]

RICHARD GRABOW: To some extent, yes. I mean, I believe I would have given a great deal of assistance to Senator Nelson's staff in terms of the technical aspects of how child support works. [LB374]

SENATOR CHAMBERS: And with the advice you gave, obviously you thought--and the assistance--was accurate and constructive. [LB374]

RICHARD GRABOW: To the best of my abilities, yes. [LB374]

SENATOR CHAMBERS: Then why don't you support your own handiwork when you come here as neutral? You're not neutral. [LB374]

RICHARD GRABOW: I've been told I'm neutral. (Laughter) I've been told I'm neutral. [LB374]

SENATOR CHAMBERS: Who told you that? [LB374]

RICHARD GRABOW: Joe Kelly. [LB374]

SENATOR CHAMBERS: Joe Kelly is the Lancaster County Attorney, to make the record straight. And when that Lancaster County Attorneys Office is involved, the Lancaster County Attorney ought to be here. But I say because of the way he was dealt with by me the last time he was here, he sent this sacrificial lamb. (Laughter) And this is why I try to...I go around the stump a bit, but I want to bring it down to the way it really is. He knows what he's talking...well, he doesn't need me to speak for him and I'm not speaking for him. I'm not his advocate. But there are too many times when we have things brought to us and there is not a clear disclosure of where it came from. But I detect what happens. And that's why sometimes you don't see the one who is really

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behind it coming here, because they say of me--not intending to offend my Christian friends--what they said of Jesus: He had no need that anybody testify to him of man, for he knew what was in man. And they just know that I see through them. There is...let Mr. Kelly know that there's nothing wrong in my opinion with trying to get the Legislature to do something that might assist what he's trying to do. It's our responsibility to analyze it, evaluate it, and determine whether we accept it or not. But when he's going to lay dead in the bushes and send somebody here and tell that person you're neutral, when in fact he's got to be a proponent, he did it. His fingerprints are on it. His palm prints are on it. He hugged it to his bosom and squeezed it to give it life, and he has to come here and say to somebody like me that he's neutral; but he really isn't. And I think if you would ask him outside of this room, he would not be neutral because he was honest enough to say he was told that he's neutral, but he knows the contrary. I don't think that fact alone takes away from the validity of anything you may have said, but I think I made it clear that this approach is not one that I particularly care for. I haven't tried to conceal what my view is. I still don't think you're a crook but I think you're a bag man. That's what he carries. [LB374]

SENATOR ASHFORD: I don't see any other... [LB374]

SENATOR CHAMBERS: I like this guy. (Laughter) [LB374]

SENATOR ASHFORD: Yeah. We can keep going. I mean, if we're... [LB374]

SENATOR CHAMBERS: No, that's all right. [LB374]

SENATOR ASHFORD: Thank you. [LB374]

RICHARD GRABOW: Thank you. [LB374]

SENATOR ASHFORD: Do we have any other neutral in-favor-of people? Okay, Senator Nelson, who I know is in favor of the bill. [LB374]

SENATOR CHAMBERS: I don't know. [LB374]

SENATOR NELSON: Yes. And I know the hour is moving along but I do want to say a couple things. First of all, I very much appreciate Mr. Grabow's coming. He knows what he's talking about. He's provided valuable information to us. I just want to tell you that there are other county attorneys who would like to enforce delinquent child support but they don't want to touch it because they're uncertain of the authority that they have. And so this is where this is coming from to...the issue, of course, it was Senator Coash's State v. Zamarron. It's No. A-11-378 if you want to refer to that. And it came on another issue. But Judge Cassel, who is now on the Supreme Court, says it boils down to this, that if you don't have statutory authority to do this thing, then we're not going to support

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you on that. As an attorney who used to practice domestic relations years ago, I was continually frustrated about the inability to go after deadbeat husbands and collect the child support. They find every way in the world to avoid attachment, to change jobs. And not only did the family suffer, but if the county has to advance the money, why, then it's taxpayer money going when these people are well, or should be, well able to pay. And because of this, and I do want to mention I think maybe Senator Chambers has softened his stance a little bit on this, we do in Douglas County have a separate, as was said by Mr. Grabow, enforcement agency. They're not connected with the county attorneys office. They're just out there to collect child support in any...from any way that they can see clear to get ahold of some assets. And this would work to their benefit, as well, I mean in collecting child support, as an authorized person is where they would come under this category. So I think although there may be some detriment to people that might have to stay in jail because they can't come up with an appearance bond, as I said in my introduction there are many times where bond money does become available through the family, and I guess we have to weigh here whether they're going to take the chance and put the bond money up so that their loved one or relative can be out for several months before it finally comes to trial and stand the chance that somebody is going to take a look at it and say, oh, we can help out by collecting child support here. And one final point, I'm not satisfied that the court is going to be persuaded to set a high bond by anybody, whether it's the defense or the county attorney, just so that child support can be collected. I think we have a little more confidence in our judiciary there. So that would conclude my closing and I thank you for consideration, and I hope perhaps with some minor changes that I would ask the committee to advance this bill. [LB374]

SENATOR ASHFORD: Thank...Senator Chambers. [LB374]

SENATOR CHAMBERS: Were you expressing your opinion about how the Supreme Court will rule on this matter, and you said you don't think they will allow the (inaudible)? [LB374]

SENATOR NELSON: No. This was the Court of Appeals. This case... [LB374]

SENATOR CHAMBERS: I know. I thought you said but the case has been gone up to. [LB374]

SENATOR NELSON: No. I said Judge Cassel is now on the Supreme Court and that was...that had nothing really to do, but he was the judge that gave this opinion and he was on the Appeals Court, the State Appeals Court at that time. [LB374]

SENATOR CHAMBERS: Oh, okay. Okay. [LB374]

SENATOR ASHFORD: Thank you, John. We'll now go to LB615; Senator Schumacher

is here. Guardianships. [LB374]

SENATOR SCHUMACHER: (Exhibit 12) Senator Ashford, members of the Judiciary Committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, first name P-a-u-l. I'm here today to introduce LB615 to the Judiciary Committee. There are two basic ways under the law as it's currently written for somebody who is incapacitated, can't handle their own affairs, generally because of some mental issue, to have their affairs handled for them. One way is with what's called a general power of attorney. They basically sign a paper that says so-and-so can handle my affairs for me. And when they have one of those signed, that's about the end of it. There's no judicial review unless somebody feels that somebody is stealing from them. There are no reports to file. There are no involvements whatsoever by the judicial system unless there's a case of theft or embezzlement of some kind. The other way that people have their affairs handled for them is that they are not so fortunate to have been in the position or to have had the wisdom of signing a general power of attorney, and a usually relative goes to the court system and says hey, Judge, so-and-so is no longer competent; they have some assets or some income stream; they need somebody to be able to sign papers for them and take care of their affairs. And there is a procedure that is then engaged for the formation of a guardianship. Essentially a...almost a legal parent for this person who's got the ability to handle their particular affairs, and with that procedure all was well and good. Except human beings being what human beings are, in the case of some guardianships, some money showed up missing. And since that was under the purview of a court-authorized guardianship, it became an issue. And the Legislature tried to address that issue a couple of years ago in a bill I believe Senator Coash had and that we debated quite a bit in the Legislature. And I think the interests that were trying to be balanced there was something that would minimize the chance of somebody misbehaving with somebody else's money while at the same time not complicating life for those situations which represent a good number of situations where the only money involved is some social payment of some kind, some social benefit off of a program generally far less than \$1,000 a month, and where the only estate involved is generally less than \$10,000, 12,000. So not a lot of money involved. And in those cases, generally a parent, a sister, an uncle, a brother, somebody gets saddled with the obligation of the position of guardianship and taking care of that person's money and income and paying their bills and basically handling their affairs. And it's not a coveted position. It is one that people do not really like doing it. They do it out of consideration for their loved ones. But it is a problem. And we made some effort in the Legislature to try to keep that process as simple as possible for that great majority of the cases where you just have good actors in an unfortunate situation. After that was passed, the courts do what courts do and what they're perfectly entitled to do, and that is promulgate rules and procedures as to how things are going to be handled in the system under the general guidelines of what the Legislature laid out. And there apparently were differing opinions there, as there are differing opinions in the Legislature. And after it went through the court's sausage grinder and sausage press, people in my district, as I

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assume everywhere, began receiving love notes from the court. And the court basically says attached to stuff you've got to fill out. Okay, now this is a simple little guardianship. Parent. Parent owns a farm. He's not going to steal anything from the kid. The kid has got a mental issue, over 21 years old, can't handle his own affairs; and he gets a little government compensation, far less than \$1,000 a month. You've got to fill out these forms every year. Well, it's not necessarily...you don't want to get the judge mad at you by filling out the forms wrong. Same time, you go to an attorney. And even attorneys, at times, have consciences, and they don't want to charge to fill out forms when they know that basically it's not serving a real function in this particular case. So life got really more complicated than it needed to be. And, you know, you contact your state senator, you contact the local attorney, you contact the judge. You try to, you know, say this is just not right. And basically it's real hard to look those folks straight in the eye and say, well, this is all necessary. Local attorneys talked with me--and not necessarily all local, I don't want get all the Columbus attorneys in trouble--but they talked to me and said that, you know, there's a problem here. In talking with representatives of the bar, I came to realize that the courts have been made aware that maybe there was a bit of overkill, maybe a lot of overkill, and that the bar and the bar association and the courts were trying to come up to a procedure that would accommodate things. But progress was not necessarily a solution, and at the time of the period for end of bill introduction the problem was not solved. Some good faith efforts underway in order to try to come up with a simplified procedure by the courts amending their rules, some summary procedure that the local judge could waive off after the initial proceedings in determining what risk there was involved with somebody pilfering the person's assets, what income levels to set or value levels to set before life got more complicated. And so this particular bill was filed. Since it was filed, a couple things have come to my attention. There probably was not adequate thought put into what happens in the event of a person--and how they could do it on \$12,000 a year I'm not sure--but was off in Siberia vacationing and the 30 days after the notice was mailed went by and all of sudden they didn't realize they were being put under a guardianship. So I have an amendment that has been provided to the committee that would require for service by the sheriff, an actual service by the sheriff, prior to the system locking in. And another thing that was pointed out to me is that there may be need to clarify the ranking between the language in here and the language in the medical power of attorney as to who could call medical shots for the party. Where I think we're at today is that there's ongoing good faith discussions between the bar association and the court in trying to come up with an answer within the context of Senator Coash's original legislation by modifying the court rules. So my suggestion, after we get done with the hearing today, is that this matter be held over; and over the summer, perhaps things will come together for everyone and everyone will be satisfied. The Legislature indirectly remains a party to these negotiations then because if they don't become satisfied, action can be taken under the bill next year to move it out. That would be my opening statement on this. [LB615]

SENATOR ASHFORD: Okay, with that...yes, Senator Coash. [LB615]

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SENATOR COASH: Thank you, Chairman Ashford. Thank you, Senator Schumacher, for bringing this. Of course I've been involved in this because it was my bill. For the record, when we passed LB, I think it was LB112, there was a lot of things in there, and what we changed legislatively was pretty narrow. And as you indicated in your opening, in addition to the legislation that went in effect, court rules also went into effect. And I...if you know, and if you don't that's fine, but when you thumb through the voluminous papers there that are part of this, what is your understanding of how much of that was a result of the bill and how much of that is the result of court rule that went in following that? [LB615]

SENATOR SCHUMACHER: Well, the cover letter starts out: You will find several attachments to this letter. Please read the changes in your responsibilities as a guardian conservator. It reflects the many changes the Legislature implemented last year. I have enclosed the forms that are required. In addition, please include individual bank statements. A filing fee will be \$10 for the guardianship. The reports are due on July 31. You are required by the new law to mail the complete reviewed documents and bank statements to any individual who might also be an interested party to protect the person's interest, including the parents, siblings, adult children, and the so forth. All mailings needs to be sent prior to the court's review date. You should also note that you will be required to file a copy of your letters with the register of deeds in the county where the property is located. For information, please review the on-line video referenced in the document regarding the changes. If you have any questions you should contact an attorney. So that...I'm...what they tell me is that very... [LB615]

SENATOR COASH: So it's our fault is what they're saying. Okay. [LB615]

SENATOR SCHUMACHER: No, never it's our fault. But... [LB615]

SENATOR COASH: Well, it is what it is. We have a responsibility in there. [LB615]

SENATOR SCHUMACHER: Right. I was told that it went from a few pages, kind of a little accounting sheet, to this. [LB615]

SENATOR COASH: Right. I think it's important for the record that there is a good faith effort on the part of the court and the bar to address this, and the court recently put together a work (inaudible) task force that's official through the Supreme Court to continue to take a look at the these guardianship efforts. While your bill may not be the answer, I'm happy that we do have a vehicle to address some of these changes legislatively, if they're needed, because I'm not satisfied where we need to be either. We have a problem. As you pointed out, guardianship isn't something people are banging down the door to serve. And we have more and more vulnerable people who need a guardian, have a need now for guardianships, and we expect that number to grow in our

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state. And if we continue to put barriers in front of that guardianship, we're going to be in a real pickle because of that problem. So I do appreciate bringing the bill, appreciate your comments, and thank you for working with the committee and the courts on this issue. [LB615]

SENATOR SCHUMACHER: And the intent is to be a vehicle and also a seat holder at the table for the Legislature. [LB615]

SENATOR COASH: Thank you, Senator. [LB615]

SENATOR ASHFORD: Let me ask, how many are...yes, Senator Seiler. [LB615]

SENATOR SEILER: I have just one question. I've had a lot of these from nursing homes where people have just gone in and exhausted their assets, so they're down below \$10,000, but they were successful prior to the infirmary and they get little more than \$12,000 a year from Social Security. I'm wondering if that's a little low. [LB615]

SENATOR SCHUMACHER: It could be, Senator. And I didn't spend a whole lot of time researching that number. It was a fairly arbitrary number, figuring \$1,000 a month, because I knew that this bill probably would be used as a placeholder. [LB615]

SENATOR SEILER: Okay. That's all I...that \$10,000 is fine because I think you find that a lot, but I think your Social Security number is a little higher than that. [LB615]

SENATOR SCHUMACHER: Maybe a little low. Yeah. [LB615]

SENATOR ASHFORD: Senator Chambers. [LB615]

SENATOR CHAMBERS: Did you indicate that Senator Coash is responsible for all these papers that now have to be filled out? Because I know somebody who's been doing it and having to send it to grown siblings who have no interest whatsoever, don't want to be bothered. But then you sweat how am I going to prove that I actually sent it and that I did what I'm supposed to do? And you're right that this is not easy work; it's not pleasant work. It's very difficult work and the amounts are piddling, but it's as though you're handling a million-dollar estate. So if I understand what you were talking about is a way to simplify some of this, at least when you're dealing with very small estates. Is that... [LB615]

SENATOR SCHUMACHER: That's correct. [LB615]

SENATOR CHAMBERS: Okay. [LB615]

SENATOR SCHUMACHER: And it was Senator Coash's fault. [LB615]

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SENATOR CHAMBERS: Uh-huh. Guilty as charged, just like I thought. Um-hum, I know how to deal with him now. (Laugh) [LB615]

SENATOR ASHFORD: Thanks, Paul. Let me ask, how many are here to talk about this bill? Good. Why don't we get started then with the idea that this bill will not come out this year; so there will be further discussions. But let's start over here, should we do that? [LB615]

SENATOR COASH: I think we're going to start with proponents though. Did you want to start with proponents? [LB615]

SENATOR ASHFORD: Is this a proponent? [LB615]

SENATOR COASH: No, I don't believe so. [LB615]

SENATOR ASHFORD: She's an opponent. Okay, why don't we go ahead with her testimony anyway. [LB615]

_____: She needs to leave at 4:30. [LB615]

SENATOR ASHFORD: With the...that's good. So with the understanding that this witness is an opponent. [LB615]

_____: An opponent, yes. [LB615]

SENATOR ASHFORD: Against. So we'll go ahead and have that testimony first. How should we do this? [LB615]

CARRIE O'BRIEN: I'm against it. [LB615]

SENATOR ASHFORD: Okay. All right, we'll do it. Come on up. [LB615]

CARRIE O'BRIEN: And I will tell you my reasons. [LB615]

SENATOR ASHFORD: Okay. Thank you for... [LB615]

CARRIE O'BRIEN: And I promise I won't...try not to take a lot of time. [LB615]

SENATOR ASHFORD: Oh no, that's fine. Now, first of all, can we get your name or can you give us your name? [LB615]

CARRIE O'BRIEN: Yeah, I got it. [LB615]

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SENATOR ASHFORD: Okay. [LB615]

CARRIE O'BRIEN: (Exhibit 13) My name is Carrie O'Brien. I'm against this bill. The reason I'm against this bill is because I had...I'll give you a little story in my paper. [LB615]

SENATOR ASHFORD: We have it, and thank you for doing that. So we have your... [LB615]

CARRIE O'BRIEN: I would like to keep it the way it is. I don't want somebody just to be able...I have my reasons. I was...I got hurt this fall and I ended up in a nursing home because I got injured. And that's part of the reason I'm against this bill. My brother and sister-in-law wanted to leave me in Lancaster Manor, and that was the first time I fell in 16...I've been on my own...(emotional). Sorry. I've been on my own, off and on, since 19...and my brother and sister-in-law wanted to leave me at Lancaster Manor. I have my own house. I have assistance. I don't think one fall in 16 years is very bad. So what I want to (inaudible) so other people, not just me. The reason that I like this system is because we do have to go to court. They can't just... [LB615]

SENATOR ASHFORD: They can't just make decisions by themselves. They have to go to the court. Right? [LB615]

CARRIE O'BRIEN: Yes. They can't just... [LB615]

SENATOR ASHFORD: So you like that. [LB615]

CARRIE O'BRIEN: Yes, I like that step. [LB615]

SENATOR ASHFORD: Okay. [LB615]

CARRIE O'BRIEN: Because I'm not just talking about myself. But what if somebody gave somebody a guardian that really didn't need it? But do you know this person? Are you just going to take the guardian person's decision without speaking to...? That's why I like the courts, because you get a guardian ad litem and I would like them to make sure that people understand what guardian means...guardianship means. Like I said in my story, I (inaudible) a guardian so I could come out of the group home. It just wasn't the right system for me, and they weren't listening to me. So my mother became my guardian, and I've been out on my own now for 17 years the second time. [LB615]

SENATOR ASHFORD: That's good. [LB615]

CARRIE O'BRIEN: So I don't want it to happen to someone else that they can just go to

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someone and say, this person needs a guardian. [LB615]

SENATOR ASHFORD: You're very clear in what you're saying, Carrie; so we understand. Plus we have your story that you've written down for us. So we have that information. Does anybody have any questions of Carrie? Senator Coash does. [LB615]

SENATOR COASH: Thank you, Senator Ashford. [LB615]

CARRIE O'BRIEN: Coash? [LB615]

SENATOR ASHFORD: Do you know him? [LB615]

CARRIE O'BRIEN: Coash, you started this mess. (Laughter) [LB615]

SENATOR ASHFORD: You know, Carrie, that's...finally, Carrie, can I just say one thing? Finally someone has the candor and in a very candid way just say exactly what was on all of our minds, (laughter), so... [LB615]

CARRIE O'BRIEN: Sorry. [LB615]

SENATOR ASHFORD: No, no. I think it's very, very good. And with that, Senator Coash, would you like to...? [LB615]

SENATOR COASH: Yeah, I could respond. [LB615]

SENATOR ASHFORD: Would you like to clear all this up for us? [LB615]

SENATOR COASH: Well, I was going to say something nice about Carrie. [LB615]

SENATOR ASHFORD: (Laugh) No, you still can. [LB615]

SENATOR COASH: And I'm going to do that anyway. Thanks for coming and thanks for keeping an eye on this Legislature. And on your written statement you talk about some training that you do, and I've been in your training and you do a good job. [LB615]

CARRIE O'BRIEN: You have? [LB615]

SENATOR COASH: Yes. [LB615]

CARRIE O'BRIEN: See, I've seen so many people I can't... [LB615]

SENATOR COASH: I've taken your training. And you, of course, know where to find us. [LB615]

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CARRIE O'BRIEN: I sure do. [LB615]

SENATOR COASH: I'm sure when the committee and Senator Schumacher make the work...we're going to use this bill to make things even easier for people who need them but keep all those protections in place. [LB615]

CARRIE O'BRIEN: That's what I'm asking for: keep protection in place. [LB615]

SENATOR ASHFORD: And I think you're very clear in what you're saying, Carrie, and we appreciate you coming. And especially having to wait all afternoon to get to... [LB615]

CARRIE O'BRIEN: That's fine. [LB615]

SENATOR ASHFORD: Well, thank you. [LB615]

CARRIE O'BRIEN: You're welcome. [LB615]

SENATOR ASHFORD: Okay. Thank you, Senator Coash, for causing all this. No. (Laugh) [LB615]

SENATOR ASHFORD: Let's go back to those who are in favor of the bill and then we'll go to the opponents. Do we have any proponents of the bill? Any opponents, other opponents? Come on up. [LB615]

MARLA FISCHER-LEMPKE: (Exhibit 14) Good afternoon. My name is Marla Fischer-Lempke, M-a-r-l-a F-i-s-c-h-e-r hyphen L-e-m-p-k-e. I'm the executive director for The Arc of Nebraska, and we're a support and advocacy organization for people with intellectual and developmental disabilities and their families. The Arc of Nebraska opposes LB615 that provides for summary guardianships. We understand LB615 was likely introduced to accelerate the guardianship process when not much financial resources are at stake, but it fails to consider the human cost that's at risk. As written, and then with the amendment, it appears to presume that the person is incapacitated unless the person or another interested person objects to the affidavit stating their alleged incapacity. The current procedures for filing a petition notice, etcetera, must be utilized. We do a disservice in presuming incapacity to be true when people with developmental disabilities may have no idea how to follow through with an objection regarding their incapacity. This removes due process. It should be noted that many people with developmental disabilities don't need a guardian, just like Carrie, for example. A guardianship is the most restrictive form of substituted judgment. Many people need some help with making decisions but not all decisions. Some people do and so in some situations guardianships are needed. However, we should not presume

that because someone from the outside looking in believes a person to be incapacitated that it should be this easy to remove the ability for them to make decisions for themselves. We're very concerned about the list of those who may act as guardian under summary guardianship. We understand that there's a need for more guardians, but it becomes quite impersonal to state that a guardian may be a CPA, a representative from a financial institution, etcetera. We suggest keeping with the current priority list of guardian nominations as stated in existing statute. On page 5, Section 5, lines 22-23, LB615 states that the summary guardian is not required to attend training or be bonded. We're very alarmed by both of these. Under the current guardianship laws, it's discretionary whether a guardian is bonded. It seems if a court were to require bonding, there may be a reason why. Also if we're going to open the pool of potential guardians to be as far removed as a CPA or representative from a financial institution, it would behoove everyone if the guardianship were trained about making decisions for the person's best interest. Without knowing someone with a disability, what background or understanding does a person have to ensure that the ward lives in the least restrictive setting? What are they doing to gather input from the ward so that decisions truly can be made in his or her best interest? What are they doing to learn about the ward's likes and dislikes to also act in the same regard? It's well known that the current guardianship statutes have been difficult in terms of filing forms, and it's also well known that there's a lack of people willing to be guardians. What may not be as well known is that there are already people working on this issue, and I think someone mentioned the Commission on Guardianships appointed by the Supreme Court. The Arc of Nebraska sits on that commission. And I realize I'm out of time. But what I want to express is that we're very willing to work with all of you with Senator Schumacher, and I know the commission is as well, so. [LB615]

SENATOR ASHFORD: Thanks, Marla. Do we have any questions of Marla? I don't see any. Thank you very much. [LB615]

MARLA FISCHER-LEMPKE: Thank you. [LB615]

SENATOR ASHFORD: Next opponent. [LB615]

BRAD MEURRENS: (Exhibit 15) Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist for Disability Rights Nebraska. As the designated protection and advocacy system for persons with disabilities in Nebraska, I am here today in opposition of LB615. And to be brief, you know, since guardianship involves significant restrictions on the activities, actions, and the rights of incapacitated individuals, they should not be entered into lightly. And contrary to the legislative intent statement of LB615, we believe that no guardianships are small. They directly involve the most significant aspects of an individual's life and a person's civil rights. We take issue with a description of small guardianships in the legislative intent statement. The

definition of a small guardianship is premised on the amount of money a person has, not on the unique characteristics and context by which a guardianship is sought. This premise, carried over into the language of LB615, establishes a very insidious paradigm: The protections and requirements built into existing statutes around guardianships are there for big guardianships but can be discarded and dismissed for poor people--small guardianships. Irrespective of the financial figures, guardianships, both big and small, are really big issues for the presumably incapacitated person and should be deemed a big issue by the potential guardian. LB615 goes in the opposite direction. And rather than reiterate Marla's comments, we also agree with The Arc that there are some substantial problems around Section 5 of LB615. It removes some of the protections and safeguards and training and education requirements for summary guardianships but doesn't remove them for other nonsummary guardianship issues. So we would encourage this committee and whatever comes out of the discussions in the placeholder bill that that issue be one of the issues that is directly addressed by subsequent work. Moreover, LB615 does not remove the training requirements for all guardianships but just for those people who have meager estates, i.e. small guardianships. We fear that this dichotomy sets up a context for especially vulnerable individuals or would be assigned guardians who lack an understanding of the rules, expectations, etcetera, of good guardianship. Such a situation is ripe for abuse. And we would be more than happy to work with this committee, the Legislature, or any other bodies that are created in fulfilling and fleshing out the placeholder bill we have here. Our office has extensive experience and knowledge of the guardianship process. It's one of the things that we have attorneys on staff that do a lot of that work. We think that it would be a good idea to include, at least reach out to us, and we'd be happy to, you know, help this committee in any subsequent work around this issue. I'd be happy to answer any questions. [LB615]

SENATOR ASHFORD: Thanks, Brad. Any questions of Brad? I think we're all moving along on this idea that we'll work through this year. Okay, good. Thanks. Next opponent. [LB615]

BRUCE CUDLY: Hi. Thanks for the opportunity to comment. My name is Bruce Cudly, B-r-u-c-e C-u-d-l-y, speaking today simply as an advocate for people with disabilities. I have several decades of work in the field and work with guardians and guardianships in particular. I'm also a coauthor of the existing curriculum and for the training for guardians that's required throughout the state. Just a couple of brief comments. Senator Schumacher is exactly right when he goes through the number of forms. The significant amount of forms does need to be changed. The reporting mechanism needs to be changed. I understand where that concern is coming from. I'm also well aware and I guess the committee is now well aware there are actually a number of people in groups looking at some of those particular reporting issues, so. I guess what I would just simply like to say is I do not think creating another level or method of guardianship is an exact solution for something that we need to look at the reporting mechanism more than that.

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So my major concerns in terms of the summary guardianship as laid out in LB615 are simply there's no background checks for the summary guardianship. There's no training requirements for the guardianship. And the fact is that the issues for guardianship, when you step away from the reporting mechanism, are no different between anybody who requires it. It's a significant transfer of individualized power. Short of incarceration, which certainly is probably the greatest transfer of that power, guardianship issues represent transfer of personal power to another individual, not to the state but to another individual. So I think in that respect a lot of caution should be made and the same requirements for guardians that exist now should continue to exist. I just don't think creating another level or type of guardianship is the solution to the problem of the reporting mechanism and the amount of forms. And Senator Coash is not here at the moment but it is his fault, so I agree with everyone else. (Laughter) [LB615]

SENATOR ASHFORD: Thank you. [LB615]

BRUCE CUDLY: You're welcome. [LB615]

SENATOR ASHFORD: We'll go relay that to Senator Coash. [LB615]

BRUCE CUDLY: He knows that. [LB615]

SENATOR ASHFORD: Yeah, he knows. Thank you. [LB615]

BRUCE CUDLY: You bet. [LB615]

SENATOR ASHFORD: Anyone else want to talk about this bill in any form, opposed? Neutral? Susan, Judge Bazis. You're usually here more often. We're glad you're here. [LB615]

SUSAN BAZIS: They only let me out every once in a while. Chairman Ashford, members of the Judiciary Committee, thank you for letting me have an opportunity to talk. My name is Susan Bazis. I'm a Douglas County court judge. Douglas County handles the largest number of guardianships and conservatorships in the state. The reason that I am here today is I was involved in the original task force which led to Senator Coash introducing LB157, and so I was involved in that process. After that I was involved in the court rule changes and that process. And then after the statutes went into effect and the court rules went into effect, I was involved with the implementation and training in regards to those statutes with court rules for the judges, the staff, and attorneys. Since that time, we have, myself and the other judges on the task force, have been doing check-ins with groups throughout this year to see how things have been going. So we have met with lawyers, we have met with guardians and conservators, we have met with service providers to see what was happening and what was occurring. As a result of that, the bar association and myself and Judge Hutton

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have met to try to resolve or work on the issues that arose based on the check-ins that we did, and we have come up with proposed court rule changes which are going out for comment. So we are in the process of working through that. Next we will be looking at the forms and the reporting requirements. And ironically, we were supposed to do that today, start that process; but obviously I'm here, so we had to continue that and we'll start that next week. And in addition to that, the Supreme Court did form a commission on guardianships and conservatorships which are going to continue to look at court rules, statutes, and the effects that those have on...and the challenges that they raise for individuals. One of the things that I want to make clear is we did not, as part of the Legislature or court rules, make a distinction between the dollar amount of an estate, because even though we may think that \$10,000 is not a lot, or \$12,000, it is to the person who has it. And the reality is they are the most vulnerable because if the money is taken from them, there is no other money to get for rent; they lose their home. There is no more money for medication; they lose their home, so. And the reality is, for the court, that's where we see the most theft is in those cases--in the low-budget cases. Now one thing I want to make clear before my time goes is that the court rules and the legislative changes did not change the reporting requirements. What was required has always been required. The only additional thing was an inventory for guardians--it's always been required for conservators--and bank statements. And those two things have probably helped the court the most to figure out what's going on in a case. But the reporting requirements did not change from the law. It's always been that way. Any questions? [LB615]

SENATOR ASHFORD: Senator Coash. [LB615]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Judge, for being here. [LB615]

SUSAN BAZIS: Absolutely. [LB615]

SENATOR COASH: Having fun with one, aren't we? [LB615]

SUSAN BAZIS: Um-hum. I'm glad it's your fault and not mine. [LB615]

SENATOR COASH: Yeah. From the bench, you know, we had...you've seen these changes, some through legislation and some through court rule. And I asked Senator Schumacher this and I'm not trying to deflect anything here, but I want to make sure it's clear. I mean, we had a pretty big bill and we whittled it down, and then the court made some changes under their purview. [LB615]

SUSAN BAZIS: Um-hum. [LB615]

SENATOR COASH: And you talked to a lot of guardians and attorneys who serve in

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that capacity. I mean, when you hear feedback that, similar to what Senator Schumacher heard from his peers who do this work, what was the nature of their gripe? [LB615]

SUSAN BAZIS: The reporting requirements. But here's what happened with that. When we did the training, we focused on the new guardianships and conservators coming in because they fell under the new law. But people who were already guardians also fall under the reporting requirements and should have been doing it, and so we made that letter that was sent out to try to explain it to the people who already were guardians and conservators. What we learned is a lot of people didn't read it, so they sent their paperwork into the court. The court does have a new policy that if you...and the court now reviews all paperwork that's filed. We didn't used to do that. We just took it and didn't look at it. I mean, we didn't make sure everything was with it that needed to be. We do that now. So if you file your paperwork and something is missing, we send a notice back to you saying this is missing and you need to fix it. In Douglas County that was 100 percent of everything that came in we had to send back because nobody read that letter. I mean, the work from our clerk's office has been tremendous, no question about it. The work for the court has been tremendous through this process. But we see the benefit of it. And so because of that, it's the old...the people who already were guardians and conservators complaining, why do I need to do this now? I filed the same forms I've filed every single year; why do I need to do this now? And what we had to explain was you should have been doing it, but because either you didn't fill out the form correctly or have everything attached, we weren't making sure of that before, which we are now. And so once that was explained to them though, and I do think that there was some fear that the guardians were going to get in trouble because they hadn't been reporting, which they were supposed to, because a lot of them had money and controlling money and were not reporting it and they thought they were going to get in trouble for that and potentially go to jail. Some thought that they could get removed. Some thought that they were going to get in further trouble because they were taking rent without court orders, which you needed. So we really had to tell them we just need to clean up these cases, which is what we've done for the last year is cleaned up these cases, gotten everything in line, gotten them in line with what's required and what they need to do. And they've been able to do it but it's taken some work, but we've done that. But that kind of was the biggest complaint was, why do I need to this now, I've never done it before. But then once they were brought in and, as the judge, we were able to explain it to them, they understood it and they did do it. [LB615]

SENATOR COASH: So as the judge, when prior to the legislation and all the court rules, from the bench were you just saying, oh, that's okay if you don't do that? Or did you not...? I mean, if they were never doing it and all of sudden we're holding them to what they were supposed to be doing, how did you let that go by--not you, but the court... [LB615]

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SUSAN BAZIS: No. But that's a good, valid question. [LB615]

SENATOR COASH: ...let that go by for that long and now we're getting all this pushback? [LB615]

SUSAN BAZIS: Every guardian has to file a "Condition of Ward" report. It tells us what's going on with the guardian. The very last question of that form says, "Are you handling the estate of the ward?" And I'll tell you, it was a poorly worded question because most of the people we deal with are pro se. And the "estate," they thought house, property; not money, not Social Security money. So they...a lot of people said no. So if they said no, then there would be no accounting that should be attached. If they said yes, there should be an accounting. But all the clerk's office was doing was making sure that we got that form, because we didn't review the form; so we just made sure we got it. So if we got the form, they were good regardless of how they answered that question. This year, because of the inventory, because if you look back, most of the time they would say, no, I wasn't handling the estate. But once they had to do the inventory and put the Social Security money on there, the answer to that question changed. And that then kicked in the requirement that they do the accounting. So if we didn't get the accounting then we send out a notice saying we need the accounting. [LB615]

SENATOR COASH: Okay. That makes sense. Thanks for answering that. While I've got you here I want to ask a couple questions about the appointment process for guardians, because I think I know fairly well how it's going but I wanted to get your perspective from where you sit. When a new person is appointed a guardian by the court, there's a training requirement. [LB615]

SUSAN BAZIS: Yes. [LB615]

SENATOR COASH: Right. And does that training requirement kind of go parallel, in other words, we're appointing you but you need to get the training within a certain amount of time? Or do you say, well, go get the training and then come back to court? [LB615]

SUSAN BAZIS: No. They have 90 days to complete the training. [LB615]

SENATOR COASH: Ninety days. Do you...have you ever...are you able to waive that training requirement? [LB615]

SUSAN BAZIS: Yes. [LB615]

SENATOR COASH: Do you do that frequently? [LB615]

SUSAN BAZIS: Not anymore, to be honest with you. Well, because what happened is,

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and what we learned through this process and to be honest with you what we did not anticipate, is how many guardians are handling money and were not reporting it. It's astonishing. Now I will say not through any ill will of their own. The question on the form was poorly worded, there's no question about that. So I don't think they were trying to hide or deceive in any way. But just about almost everybody is handling money of some sort, but a large majority were not reporting it. So when they would come through and if it was a parent...a lot of times, if they were just going to be a guardian and not a conservator, we would waive that. But not anymore because almost everybody is handling money of some sort. [LB615]

SENATOR COASH: So you've kind of taken a different turn and everybody is required to take... [LB615]

SUSAN BAZIS: Yes. [LB615]

SENATOR COASH: Are you...and this goes to just the capacity for guardianship in our state and we struggle with that. Are you finding guardians who you would appoint, saying, you know, I'd love to be the guardian for my nephew or my cousin or my neighbor I knew growing up, whoever it is that's generous enough to step up into this role, that is requirements crazy, are you finding people are saying to the bench, you know, I'll do that but I just really can't deal with the training? Does that happen a lot, and...? [LB615]

SUSAN BAZIS: No. No, most people want to take the training so they know what's expected of them. I will say that through this process the acceptance which used to be just a paragraph basically saying, you know, I accept the duties and I'll do them to the best of my ability, is now a two-page document that goes over what's expected of them, that the forms that their attorney has given them, the forms, there's a lot more information. They know a lot more up-front now actually before they're appointed. And it's been my experience most people want to take that class because that's where they're going to learn exactly how to do everything else. They've talked to the lawyer, but then actually go through the process and do it. So I've not had anybody who doesn't want to do it other than if they've already done it and taken it; but in that situation it would probably get waived anyway. [LB615]

SENATOR COASH: Right. Last question on that. Have you seen the training? I mean, do you know what the new guardian is being taught? [LB615]

SUSAN BAZIS: Yes, I had to take the training because I've been a guardian and conservator, and my brother-in-law is developmentally disabled and I was his guardian and conservator with my husband, and my husband currently is. Once I took the bench I stopped being his guardian and conservator, but my husband still is. [LB615]

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SENATOR COASH: Any comments on the quality of the training that is provided to these newly appointed? [LB615]

SUSAN BAZIS: Well, I think it's good and I think the question, probably what needs to be asked, is before what I used to hear from when people took the training and realized they had to do the reporting requirements, because there was no requirements of anybody going over the forms or what was expected of them, which there is now, they would say, well, if I knew I had to do all this I don't think I would have done it. I mean, it's kind of what they would say, but then they did it. But now that that's all on the front end before they ever get appointed, you don't hear anything about that, and I do think that the training is done very well. And through this whole process we've worked closely, and the Court Administrator's Office has worked closely with both the UNL Extension Office as well as VAS does it--Volunteers Assisting Seniors does it--in Omaha, kind of Omaha and Sarpy County. And they've done an excellent job of adapting based on the new court rules and the statutes. [LB615]

SENATOR COASH: Okay. That's it. Thanks, Judge, for coming all the way down. [LB615]

SENATOR LATHROP: Senator Davis. [LB615]

SENATOR DAVIS: A couple of questions. How is the training done in greater Nebraska? [LB615]

SUSAN BAZIS: Videotape. [LB615]

DONNA TAYLOR: No. [LB615]

SUSAN BAZIS: Oh, no. Is that correct? [LB615]

DONNA TAYLOR: I help (inaudible) that. [LB615]

SUSAN BAZIS: Okay. Judge Taylor will address that. I think that's how it was done but they've... [LB615]

DONNA TAYLOR: Years ago. [LB615]

SUSAN BAZIS: ...corrected that. [LB615]

SENATOR DAVIS: I'll ask you then. And so we've heard that the paperwork wasn't being submitted, that all you've done is just add the bank statements and something else. It was always required but this is all that was added. Then why are we getting so many people who really have an issue with this, with the way things are? As Senator

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Schumacher referred to, and you know, I've got some cases like this in my own district where people are overwhelmed with these demands. [LB615]

SUSAN BAZIS: I think it's because...I think it's for a couple of reasons. Granted, they were always supposed to be doing it and they weren't. They don't realize that. I don't think they're being told that, to be honest with you, because they don't know it when they come and see me and we talk about that. So they don't understand that it was something that always was required. They are assuming it has to do with the new rules, but really it's the way that the court now is looking and making sure everything is getting filed. So they don't understand that process. In addition to that, I do think because they didn't have to do it before and they have to do it now, that they feel that they've done something wrong; that we're saying that they've done something or they're a criminal or we're accusing them of something. And they don't like that feeling, and I understand that. But that's not what we did. And they don't realize that everybody is in the same boat. Some of them think we picked them out and just they had to do it. But again, when they've come in to talk to us and they understand why and that it was supposed to be required and why it's required, quite honestly...now, I realize because I'm a judge they may be telling me this, but they say this is good and thank you. And a lot of them, it's parents with developmentally disabled kids, and I think because they realize there's going to be some oversight when they're not there any longer. [LB615]

SENATOR DAVIS: Okay. And then my next question has to do with just the paperwork that's submitted. So we've got the paperwork coming in and somebody is there making sure that all the appropriate paperwork is filed. [LB615]

SUSAN BAZIS: Um-hum. [LB615]

SENATOR DAVIS: Is anybody reviewing the paperwork? [LB615]

SUSAN BAZIS: Great question. Yes, 100 percent. Every single accounting is being reviewed across the state. Again, a lot of work for the clerk's office and the people that are doing that. But every single accounting that gets filed, every document that gets filed, the condition report gets reviewed and the accountings get reviewed across the board, every single one across the state. [LB615]

SENATOR DAVIS: So are we catching things? [LB615]

SUSAN BAZIS: Yes, we are. And--bring you back to the bank statements--that has been the biggest help in determining that and problems. [LB615]

SENATOR DAVIS: Thank you. [LB615]

SUSAN BAZIS: You're welcome. [LB615]

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SENATOR LATHROP: Senator Christensen. [LB615]

SENATOR CHRISTENSEN: Thank you, Vice Chairman. Thank you, Judge, for coming down. And thank you for answering the question it's Senator Coash's fault before you started. Appreciate that. When did you guys start requiring the paperwork checked over and following through on this? [LB615]

SUSAN BAZIS: It would be January of 2012, last year when all the new rules and laws went into effect. [LB615]

SENATOR CHRISTENSEN: Okay. Just a personal question for me. I have a son that's 15 and doesn't walk and doesn't talk, Down syndrome. When he becomes 19, 21, will I have to become a...? [LB615]

SUSAN BAZIS: You will. [LB615]

SENATOR CHRISTENSEN: Okay. That's what I was wondering. [LB615]

SUSAN BAZIS: Um-hum. [LB615]

SENATOR CHRISTENSEN: Thank you. [LB615]

SENATOR LATHROP: Sounds kind of personal really. Senator Seiler. [LB615]

SENATOR SEILER: Thank you, Your Honor, for appearing today. One of the questions I've always wondered about is we've got strict accounting rules for our conservator and guardian, but on our powers of attorney, if a request is made or turned down because there's no statutory authority for that, did your group, when you did a study of this, consider putting those reporting upon request from an interested person for powers of attorney? [LB615]

SUSAN BAZIS: We did not. That wasn't one of the things we were charged with. However, we did talk about power of attorneys and the difference in that the person or the ward, so to speak, or who would be the result of that, in a power of attorney the person who executes that gets to decide who's going to take care of them. And to be honest with you, is probably in the best position to do that at that time because they are of sound mind when they make that decision. In regards to guardianship, it's up to the court. And, you know, they can nominate...someone can nominate themselves; but everybody else may not agree. And so that's why I think there's probably a lot more stringent because that person hasn't nominated that person. Sometimes it is in a power of attorney if that's really necessary or in the will or somewhere it's been nominated. But I'll be honest with you, those cases are few and far between that we ever see in court.

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[LB615]

SENATOR SEILER: You haven't had any petitions filed for requiring accounting and power of attorney in your court? [LB615]

SUSAN BAZIS: No. No. [LB615]

SENATOR SEILER: Okay. We must have just hit a bunch of them. [LB615]

SUSAN BAZIS: Yeah. Nope, we haven't had those. [LB615]

SENATOR SEILER: Thank you. [LB615]

SUSAN BAZIS: You're welcome. [LB615]

SENATOR LATHROP: I think that's it, Judge. [LB615]

SUSAN BAZIS: Okay, thank you. [LB615]

SENATOR LATHROP: Thanks for coming down. And we've dismissed one judge and call another one up. Welcome to the Judiciary Committee. [LB615]

DONNA TAYLOR: Thank you. Good afternoon almost evening. Senators of the Judiciary Committee, my name is Judge Donna Taylor and I'm from outstate Nebraska or greater Nebraska; and I'll respond to Senator Davis' question in just a minute. First of all, a lot of burden has been heaped upon Senator Coash, and some of that burden needs to be shared by Judge Bazis and her cohort Judge Hutton. And when we started this last year, January of 2012, it was an overwhelming task. And Judge Bazis is right, they've always had the obligation to account. But we did, in my seven counties, pretty much what Douglas County did. We'd just say, okay, it's filed; stamp it filed; check them off till next year. And nobody ever reviewed them. And when we had the new court rules and a lot of new forms and the bank statements and the requirement, now the mandate that these courts are going to investigate these and look at these and audit these, it was an almost overwhelming task. My staff in all of my counties did yeoman's work. They met with people. They'd spend hours with people trying to help them figure out which forms needed to be filed and which ones needed to be sent out, which ones needed to be retained. But it was a very good process, because from that, starting in January, of course everybody was very rigid, everybody was very uptight, and the reaction was, as Judge Bazis indicated, that we're somehow picking on these people. And then we'd just refer to the case in Omaha about the lady who stole several hundred thousands of dollars and went to the casinos, and said this is why--and I think Senator Chambers referred to the Legislature and the Supreme Court rules committee of being in a snit as a result of one high profile case. And I would look at these people and say, well, you

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know when Omaha sins, the rest of the state does penance. But the really good thing that happened, the really good things, is there were several cases where we found several tens of thousands of dollars are missing. I've had to remove guardians. I've had to send some back to training. We've had some on payment plans because they have truly mismanaged and, in some cases, taken money, and we never would have caught this without the auditing process. Other cases, on a happier note, people would come in and they'd say, but my child handles their own money now, and they would be children raised by their parents. At the time they turned 19, they needed the guardianship and the conservatorship. Now they're in their late 20s and they're living on their own. They're making their own decisions of daily living. And I asked the parent, well, do they know to turn to an accountant or the parent when they get in over their heads? And they would say yes. And so, well, then why don't you ask for the guardianship to be terminated as not necessary? So there were several where we have restored or given all the rights of a person not under a wardship the right to make their decision. And then my time is up, so I'll just say that I... [LB615]

SENATOR LATHROP: We'll let you answer Senator Davis' question. [LB615]

DONNA TAYLOR: Okay. Yes, starting years ago, long before this, we did use a videotape, which was like a, I don't know, 40-minute videotape. But in the last, I think, probably six years all of our guardians and conservators go to a training somewhere in the state, and they're offered throughout the state, and they are generally put on by the Extension Office and they are generally co-taught by an attorney in the area, a local attorney, and then someone from the Extension Office. So they...and it's a three-hour course. And so they do have that training that I'm sure is similar to the ones in Omaha. So they're not treated any differently. [LB615]

SENATOR LATHROP: Very good. [LB615]

DONNA TAYLOR: I just want to say that it was a very good year. It was a lot of work but we've learned that not everybody needs to be treated the same way and that we do need some work on our court rules so that we can make some adjustments. Not everybody should have to account for every penny that they spend but I think it should be the court and not just a line that says, well, if you don't have this much, we're not going to worry about your case. I think the court can look and get to know their guardians, get to know their families, and decide whether some things can be waived. Thank you. [LB615]

SENATOR LATHROP: Oh, wait. We're going to have you answer some more questions. Senator Davis. [LB615]

SENATOR DAVIS: Just a little bit more information about the training. Distance, of course, is a big issue where we come from and I'm sure you know that. And I'm

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assuming these are rotated around. How many are held a year? And did everybody have to get recertified in this training? I mean were the grandfathered people not required to do that? [LB615]

DONNA TAYLOR: We did that on a case-by-case basis. If somebody was coming in with lots of questions or just a total lack of really what they needed to know about what a guardianship was, then we would send them to the training. Otherwise, they were grandfathered. But they're throughout the state. They're in North Platte and Dakota City and Madison and Holt and I don't know how many places, but every judicial district will have one, and we'll have it four times a year. And so, generally speaking, somebody should be able to get there within 90 days. And if they can't make it to one in Madison County, they can go to Holt County and get the same training. [LB615]

SENATOR DAVIS: So they have 90 days from the time they begin? [LB615]

DONNA TAYLOR: From the time they're appointed, yes, they have 90 days. And, of course, judges and courts being what they are, if people communicate with us and say I can't make it because I had a very important engagement on this day and the next time it's offered is, you know, 95 days down the road, you know, we'll certainly work with them. [LB615]

SENATOR DAVIS: Thank you. [LB615]

DONNA TAYLOR: Um-hum. [LB615]

SENATOR LATHROP: I do have a question for you, Judge. [LB615]

DONNA TAYLOR: Okay. [LB615]

SENATOR LATHROP: And maybe somebody talked about this or answered this question before. One of the things that we've come across in this committee, I think Senator Coash has worked on this issue too, which is the trouble we're having, I think in Omaha primarily, but maybe it's a problem across the state, in finding people to serve as guardians and conservators. [LB615]

DONNA TAYLOR: Oh. [LB615]

SENATOR LATHROP: And the question I have then is, assuming you agree with that fact or that statement, is does this compound the problem? By making this such a process that people go, look, I'd do it if it was just watching, you know, \$800 a month in Social Security benefits and, you know, paying Uncle Jim's rent and giving the rest of the money to him to buy pickle cards, but I am not going to do this if I've got to drive to, you know, O'Neill for three hours worth of training all so I can handle an \$800-a-month

Social Security check, for example. [LB615]

DONNA TAYLOR: I think the reputation of the system over the last years, as...and it does have a reputation now as being burdensome, and that's why we're addressing that. I mean, over the years...over the past year, we have thought about it and I think it will be much less burdensome in the future. That reputation may affect. But if somebody is willing to be a guardian, I don't think a three-hour training course is going to affect that decision, because they're not going to do it for the money; they're going to do it for a good reason. And the three-hour training course shouldn't affect that. But the long and short of it is we have a lot of people who have no family members or no appropriate family members, and finding somebody who will be a guardian for a stranger is impossible...is very, very, very difficult. When I was in practice, I was guardian for a number of...just people who had no family members. And it was very rewarding, and if you have enough of them you can make it work, and I keep trying to get some lawyer in our district to step up and maybe take on that task, and so far I've been unsuccessful. So I think it's...I don't think it's the training. I think it's just there's so many people without anybody else in the world, and they don't...so there's nobody interested in their welfare. [LB615]

SENATOR LATHROP: Okay. So you don't think it's an impediment or a contributing circumstance to the difficulty in finding guardians and conservators. [LB615]

DONNA TAYLOR: The training? [LB615]

SENATOR LATHROP: Well, the requirements that we've been talking about today as the system currently exists. [LB615]

DONNA TAYLOR: No, I really don't. I really don't. I think maybe the reputation may be affecting that but I think if somebody was really willing, that their duties should not be an impediment. [LB615]

SENATOR LATHROP: All right. Thanks, Judge. I see no other questions. [LB615]

DONNA TAYLOR: All right. Thank you. [LB615]

SENATOR LATHROP: Where are you from? [LB615]

DONNA TAYLOR: Well, I live in Neligh and my judicial district includes Antelope which is Neligh, and then Madison County which is Norfolk. [LB615]

SENATOR LATHROP: So you have a couple three hours, two or three hours to get home? [LB615]

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DONNA TAYLOR: Well, three hours to get home, yeah. Yeah, so. [LB615]

SENATOR LATHROP: All right. Well, thanks for coming down. [LB615]

DONNA TAYLOR: Thank you. [LB615]

SENATOR LATHROP: We appreciate you taking the time, as we do of all members of the bench. Anyone else here in...are we on opposition? [LB615]

KATIE ZULKOSKI: We are on neutral. [LB615]

SENATOR LATHROP: Neutral? I walked in, in kind of the middle of this. Are we on neutral? [LB615]

KATIE ZULKOSKI: Good afternoon, Senator Lathrop, members of the committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Nebraska State Bar Association. I first want to start by thanking Senator Schumacher for introducing this bill, and we really do want to thank Senator Coash. He's taken a lot of heat today, but a lot of what was accomplished with LB157 that was enacted in 2011 really were some important changes. And to the extent this committee has worked very hard on that, we want to thank the committee as well. Also with LB172 that has just been advanced from the committee, we think those are some important changes that can help with this. So this is not a problem that has gone ignored by any of you, and we really do appreciate that and appreciate Senator Schumacher taking a look at this. And we agree with him that this is the appropriate response at this time. As you can tell, there's not an easy solution. There are definitely things to be weighed on both sides, the protection of those that are the wards and in the interest of time and the ability to find people to serve as guardians and conservators, we really need to take that all into consideration and think through changes that are made in this area. To that end, the bar association had legislation drafted to address what we think of as some of the issues with the current system, and instead what we have done is worked with the courts, Judge Bazis and Judge Hutton and others have worked very closely with attorneys practicing in this area from both Omaha and Lincoln and from smaller communities, which as we know have very different systems and very different ways to address what could be similar situations. And so there's a group of people working on rules and what we can do with the rules, because as Senator Coash mentioned, it's not necessarily all the legislation that was enacted but in some instances the specific rules that are causing some concerns. And so the way we think that that can be addressed at this time is through court rules, looking at those rules and the changes. We have heard, I have not seen, I haven't gotten the e-mail notification that the rules are up for comment, but we have heard that if they are not now up, they will be up very shortly for comment. And we also want to note that there is also a group, and Judge Bazis mentioned this, working on the forms. We think that will be a big impact. There's a suggested form out there that would

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allow for a budget, a suggested budget, rather than going through and mentioning each specific check and each specific ATM withdrawal, that you could list the budget, and we think that is a really helpful suggestion that could be made. Finally, I do want to add, if this bill or something similar is considered by the committee, we do think the amendment is important. As our first testifier mentioned, there are reasons that the proposed ward does need to be notified and we need to think through how that looks and how that reaction can come into place. And we do also...we have heard from attorneys about the training and that the training really is a valuable thing, and perhaps waiving that for summary guardians may not be the best answer. And with that I'm happy to take any questions. [LB615]

SENATOR LATHROP: I see no questions. Thanks, Katie. [LB615]

KATIE ZULKOSKI: Thanks. [LB615]

SENATOR LATHROP: Other neutral testimony? Senator Schumacher to close. [LB615]

SENATOR SCHUMACHER: Thank you, Senator Lathrop and members of the committee. I think we've had an informative hearing and get a gist of the issue that there is: limited availability of guardians, particularly in small financial estates, a lot of paperwork, a lot of court effort, maybe only marginal benefit from that. I began by comparing the power of attorney situation with the guardianship situation; and at least in the area of small financial things, hopefully the bar's effort together with the effort of the courts to try to strike a balance and maybe a functional system that has qualities of ease of participation and minimized bureaucracy will emerge over the next year. And at least, after this hearing, I have something that I can tell my constituents. I can tell them: It's Senator Coash's fault. (Laughter) Thank you. [LB615]

SENATOR LATHROP: Perfect. [LB615]

SENATOR ASHFORD: And we're back to that, but good. [LB615]

SENATOR LATHROP: Thanks, Colby. [LB615]

SENATOR COASH: You're welcome. [LB615]

SENATOR ASHFORD: It's an imperfect system, Paul, but it's the one we've got. [LB615]

SENATOR SCHUMACHER: What's that? [LB615]

SENATOR ASHFORD: It's an imperfect system but it's the one we've got. [LB615]

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SENATOR SCHUMACHER: And we're stuck with it. [LB615]

SENATOR ASHFORD: Yeah. [LB615]

SENATOR COASH: You're stuck with me too. [LB615]

SENATOR ASHFORD: Yeah, it seems so. (Laugh) No, it's all good. All right, LB455. [LB615]

BRENT SMOYER: Good afternoon/evening. Mr. Chairman and members of the committee, my name is Brent Smoyer, S-m-o-y-e-r, appearing on behalf of Senator Lautenbaugh, Senator Scott Lautenbaugh of District 18 in Omaha. He sends his regrets that he could not be here today. Basically it's a very simple and straightforward bill bringing forward--which, by the way, is not Senator Coash's fault. LB455 provides a procedure for a landlord to almost immediately evict a tenant who poses or permits another person to pose a clear and present danger to the health and safety of other tenants or persons on the property. Current statute falls short of allowing a landlord to act quickly in the best interests of law-abiding tenants in their buildings. LB455 would remedy that shortcoming by allowing the landlord to terminate the offender's rental agreement upon three days' notification as opposed to the traditional 14 currently in statute. And the bill specifically lists activities that would constitute what is a clear and present danger and would include manufacturing or selling of drugs, prostitution, sexual assault, and illegal use of a firearm. The bill contains several safeguards for law-abiding tenants. A tenant could not be evicted if he or she reports to law enforcement the activities causing the danger or if he or she had sought a protective order or restraining order against the person posing the danger to the other tenants. This law is not unique. There are other jurisdictions, including neighboring Iowa--which I know we don't always like to emulate Iowa, but in this case I think they got something right--that would allow for removal of dangerous tenants in order to protect the others living and using the rental property. This bill was drafted and brought with the intent to be able to protect those innocent law-abiding tenants from dangerous and malicious actions of the tenants engaging in illegal activity. Following me are experts in landlord tenant law that would be able to better explain the nuances of this statute in this proposed bill, but I suppose I could answer any questions you might have. And, of course, there will be no closing. [LB455]

SENATOR ASHFORD: I think we're good. Thanks. Thank you. [LB455]

BRENT SMOYER: Great. Thank you, Mr. Chairman. [LB455]

SENATOR ASHFORD: Thank you. [LB455]

GENE ECKEL: (Exhibits 16 and 17) Good afternoon, Chairman Ashford and members

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of the Judiciary Committee. My name is Gene Eckel; that's spelled E-c-k-e-l. I am on the board of directors for the Nebraska Association of Commercial Property Owners and the Apartment Association of Greater Omaha and Lincoln. I'm appearing today on behalf of both associations who support LB455. As you heard, LB455 seeks to address situations where a tenant or a tenant's occupant or guest engages in conduct that affects the health or safety of other tenants, the landlord, or the landlord's employees, and provides for an expedited process of removing the tenant from the leased premises. Support of LB455 by both associations originates from the desire of its members to protect innocent tenants and their family members as quickly as possible from harmful conduct by another tenant, tenant's occupant, or guest. If you guys...if everyone can just...you don't have to, but on page 2, lines 3-20, it goes through the current law in Nebraska where if it's not for nonpayment of rent and the tenant, let's say, conducts themselves in a criminal act, the law says that the landlord has to provide the tenant a 14-day notice saying you have 14 days to cure this default, and if you don't cure it in 14 days, then at the end of 30 days of receiving this notice we can file a lawsuit to evict you. The problem is that with the criminal act our property managers and landlords don't believe that can be cured. Or if it's a conduct that maybe poses an environmental risk to other tenants, they don't think that could be cured either. So in that type of situation, they'll still issue the 14-day notice but say it's not curable, and say at the end of...if you're not out by the end of the 30 days, then we'll file the lawsuit. We believe that's way too long when there's other tenants who live next door or across the hall and have to be dealing with that tenant. What we're trying to do here is expedite the process. We give them a three-day notice, indicate to the tenant that it's not curable, their conduct, and if they're not out within three days, then we start the lawsuit. And a lawsuit in Nebraska, once you file it, the hearing will usually be in 10-14 days by statute, and at that point they have the hearing. The judge will then hear all the evidence, look at the totality of the circumstances, and determine whether or not the tenant's act does rise to the level of a clear and present danger to the other tenants or the landlord, and make the decision. And if the judge decides that it does pose a clear and present danger, then you still have another day or two or...depending on who's serving the writ of restitution, it could be up to seven days. So this is to kind of give you a thumbnail sketch of what the current law is and what this law provides. I am the person that drafted this legislation and I'd be willing to take any questions at this time from the committee. [LB455]

SENATOR LATHROP: Okay. Senator Coash. [LB455]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Mr., is it Eckel? [LB455]

GENE ECKEL: Yes. [LB455]

SENATOR COASH: Thanks for coming down and waiting all day. I'm a landlord as well, so I'm taking a close look at this. Couldn't you put what you want from this piece of legislation in the lease, the tenant agreement? In other words, couldn't you say in your

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lease, you're convicted of these crimes and you're out, and have them sign it and have the lessee sign that, and would that get us to the same end? [LB455]

GENE ECKEL: Well, you could...currently, a lot of property manager companies do put a lot of these enumerated items in their leases and say that it's not curable. They still have to abide by the state law, though, and say we'll give you the 14-day notice, it's not curable, but they still have to wait 30 days before they can file the lawsuit. If they filed it prematurely, when they get to court the judge would say you didn't give them...you know, you have to wait 30 days; and so they would dismiss the case at that time. [LB455]

SENATOR COASH: Okay. All right. [LB455]

GENE ECKEL: So what we're trying to do is shorten that 30-day period and say, you know, in this case it's three days; if you're not out, then we'll file a lawsuit. [LB455]

SENATOR COASH: Okay. With the particular behaviors that we're trying to address here, the prostitution, illegal use of a firearm, all of those things, and in the bill does it address whether or not that's just charged with or convicted of? In other words... [LB455]

GENE ECKEL: I don't believe it addresses whether or not they've been charged or in possession of, or if they didn't...been convicted. Again I will point out that in a lot of the leases the property managing companies or the landowner, whoever drafted it, have been very careful to say even if you've just been charged, so. And they put that in their rules and state law allows the landowner to make rules. [LB455]

SENATOR COASH: What does the bill say: charged with or convicted of these things? Because that could be months between. [LB455]

GENE ECKEL: That's correct. I don't believe...I think it says...well, let's look here at the assault...it says "physical assault or the threat of physical assault," and doesn't indicate whether or not the person's been charged or... [LB455]

SENATOR COASH: It might be worth taking a look at that, because here was my situation. I had a tenant. He fired a gun in the city limits, and I apparently broke the law because I told him to be out by the end of the week. You know, I gave him a formal eviction notice. But he disputed that charge in the court and I don't know what the end result of that was, but I knew he was charged because I got the record. He disputed it in court. By the time he had his court hearing, he had already moved out but, I mean, that was my situation, so I understand what we're trying to get at here, but. [LB455]

GENE ECKEL: And normally at these hearings when someone is served with a 1430

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and there's a court hearing on that, as an attorney we have to subpoena...if there was a police officer that came and made a report we want to subpoena the police officer. We bring in evidence, the officer's report. We bring in witnesses who might be other tenants. So we really have to prove our case even under current law, and if we can't prove it, you know, the judge is going to weigh the facts and the evidence and if we can't prove it then sometimes the tenant is allowed to stay. [LB455]

SENATOR COASH: Okay. [LB455]

GENE ECKEL: So we do have a burden that we have to prove. [LB455]

SENATOR COASH: Do you understand my concern about the charge versus conviction... [LB455]

GENE ECKEL: Yes. [LB455]

SENATOR COASH: ...and something Senator Lautenbaugh and his office may want to take a look at. [LB455]

GENE ECKEL: And we could certainly...we're willing to look into that and work with anyone who has concerns. [LB455]

SENATOR COASH: Okay. I don't have any further questions. Thank you. [LB455]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB455]

SENATOR LATHROP: I do have two things I want to point out, and we talked about one of them this morning, which was on page 4, line 14. These are the enumerated things that would constitute a clear and present danger, and you sort of do a kind of a grab bag there on line 14 that gets us into what could be pretty petty stuff, which is any crime against a person or property. So if somebody did anything to damage property, however slightly, it would probably be...come with that, even if they maybe...well, I'm not going to say a nail hole, but something. The other thing that occurred to me while I was sitting here is in...on page 3, line 18, at subsection (b) there, you talk about the activities of a guest of the tenant. And I'm thinking about a tenant has some people over for a party on the Fourth of July, somebody let's off some illegal fireworks. Literally you could throw the tenant out in three days even though the guest left at 11:00. So I don't know what you do to require that the activities of the guest have to be either something recurrent or that the guest needs to be turning into a, you know, a de facto tenant or something. [LB455]

GENE ECKEL: I'll address the first concern you had with regard to the catchall provision. The reason why we...when I drafted this, why we put it in is because we

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literally could not list every potential clear and present danger or conduct that a tenant could, or his guest could pose. So that's why we put that in there. But knowing of your concern, you know, again we're willing to work with you or anyone on that language and try to address that. With regard to the guest or occupant in (b) of Section 3, the exemption provision on page 4, in subsection (4), allows the tenant, if it's a guest of their or an occupant of theirs, as long as they... [LB455]

SENATOR LATHROP: Oh, I got you. [LB455]

GENE ECKEL: If they tell law enforcement or the county attorney, hey, this person did this, then they would be exempt from this statute. And when I was drafting this, I was trying to be as fair-minded as possible and try to be a balanced approach here, because there are situations where, you know, a tenant isn't going to know that their buddy is going to do something like that. [LB455]

SENATOR LATHROP: So you want them to turn them into the cops? [LB455]

GENE ECKEL: Well, yeah. It would be responsible. Yeah. But I can see your point that you maybe want a series of conduct, maybe just one isn't enough. And again, sometimes that's going to be up to the judge to make that determination at the hearing. The judge might say, look, letting off an explosive, it's bad, but the facts, maybe it just wasn't enough and we don't see this as a clear and present danger. [LB455]

SENATOR LATHROP: Okay. [LB455]

SENATOR ASHFORD: Okay, good. [LB455]

GENE ECKEL: Thank you. [LB455]

SENATOR ASHFORD: Thanks, John (sic--Gene). Yes. [LB455]

KENT ROBERT: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Kent Robert, R-o-g-e-r-t, and I'm representing today the Statewide Property Owners Association. We are an association of investment residential properties. We want to thank Senator Lautenbaugh for introducing this bill. Mr. Eckel laid it out pretty clear. Currently, the Residential Landlord and Tenant law provides property owners with very few tools for dealing with crime committed on their premises. We can serve a 14-, 30-day notice, which provides a tenant with 14 days to stop violating the lease. A lot of crime can be committed within those 14 days, and even more within 30. We can serve a 30-day notice to terminate. Again when the lease is expired, only at the point. And sometimes if you're 28 days away from the next rental period, it can be almost two months before you can get him out of there. The police often don't understand the Landlord and Tenant Act very well, and their excuse is that

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it's a civil matter and we have to deal with it in that way. But for those reasons laid out before us, we support LB455. I'll answer any questions. [LB455]

SENATOR ASHFORD: (See also Exhibits 18 and 19) Thank you, Kent. I don't see any questions. Okay. Any other proponents? Opponents? Neutral? Done. Over. Who's bill was this? [LB455]

LaMONT RANEY: Lautenbaugh's. [LB455]

SENATOR ASHFORD: Oh, I'm sorry. Okay. Senator Seiler is going to now discuss control of dead humans (laugh), which seems apropos for 5:25. [LB455]

SENATOR SEILER: (Exhibit 20) Thank you, Mr. Chairman and members of the committee. This is LB441. My name is Les Seiler, S-e-i-l-e-r, and I represent the 33rd District. I bring this bill on behalf of the Funeral Directors Association. And it mirrors the current statute except expands it. It starts out with an addition of an affidavit that you can sign to appoint someone to handle your funeral services. The person has to be 18 years or older and of sound mind. Then you can just take the probate code of Section...I think it's around 2305, and it mirrors that one completely. The old statute didn't. It jumped around, jumped over the brothers and sisters if there were no parents, and it mirrors the ancestry of the person. It also provides for if there's, say, two or three children and they can't agree how that problem is resolved. It goes down to the guardian and the personal burial. Basically it takes you through the problems and how to solve it with the next of kin. You know, I've got about 75 estates open that are less than a year, and I've had that for about...since about 1976. But, you know, until the last three or four years, we didn't have problems like this. But all of a sudden, and especially in the, I call them the pots and pans cases, children are willing to fight over anything. And how to do the funeral and the price of what they're going to spend on that funeral becomes a major issue. If you will notice, LB441 originally had Sections 1 and 2 for a preneeds rewrite. The proposers of this bill have taken a look at that and said, no, the whole preneeds contract needs to be redone. So I have filed an amendment to strike Section 1 and Section 2, and they will come back next year with a complete rewrite of the preneeds sales. If you have an (inaudible) fight, jurisdiction is granted by this bill to the county court. The funeral home can petition the court if no one else is willing to, or the relatives can petition the county court and have it resolved. One thing this bill does is the same as what the old bill did: provides criminal and civil liability protection to the funeral establishments both for doing the petitioning to the county court and for the providing of services pursuant to the county court's jurisdiction or upon their jurisdiction. I believe that pretty much gives you the bare bones. There will be people testifying as to the more parts. And I do think we'll have one opposition for sure. Any...I'd ask for any questions. [LB441]

SENATOR ASHFORD: I don't see any, Les. Thank you. [LB441]

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SENATOR SEILER: Okay. [LB441]

SENATOR ASHFORD: Proponents. [LB441]

WILLIAM LAUBER: (Exhibit 21) Good afternoon, Chairman Ashford and members of the committee. My name is William Lauber, L-a-u-b-e-r. I have an ongoing 25-year career in funeral service. I operate funeral homes in Nebraska and am past-president of the Nebraska Funeral Directors Association, and also I served on the state Board of Funeral Directors and Embalmers. And currently I am the legislative chairman for the association and helped put this bill together, and ask for your support in LB441. The main question that revolves around this bill is, is who does have custody of a dead human body? Or more specifically, who has the superior right to make post-death activities such as making funeral and memorial service arrangements and choosing the mode of disposition, whether it be burial or cremation? And if we look back in our history in our country, when there was a dispute in trying to answer that question the courts looked at these cases and put a lot of considerable weight on if the decedent, before his or her own death, had any instructions either verbally or in writing as to what they wanted to do with their body and other situations regarding the post-death. And so over the years and over the decades, many states enacted laws that dealt with the decedent having the major control over their wishes. And, in fact, in the 1960s the decedent having control strengthened considerably when the Uniform Anatomical Gift Acts came out and which gave...you know, which is from demand of the need for transplantation and organ and tissue. So if a decedent, before his or her own death, puts in an instrument such as a will or walks into a funeral home and invests in a preneed contract, or if the decedent, before his or her own death, appoints an agent and executes an affidavit, the decedent has the control on this. The question arises when the decedent does not have any instructions. Then it goes into what we call a priority list that Senator Seiler talked about where we have, for example, the surviving spouse and the dependent children and the children and the brothers and sisters and so forth. And what we have trouble today in our changing society is where we have roadblocks and which it will stalemate or delay or even stall out the funeral arrangement process. And in our LB441 we have some components that we think can take away some of these roadblocks, and one of them is missing relatives, uncooperative relatives, majority control, homicide cases, dissolution of marriage, and those kinds of things that we have in the bill that address these kinds of roadblocks. And then... [LB441]

SENATOR LATHROP: Sort of... [LB441]

WILLIAM LAUBER: Yes? [LB441]

SENATOR LATHROP: The red light comes on and we've got to see if anybody has a question. [LB441]

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WILLIAM LAUBER: Okay. So...and then finally we have the Nebraska Probate Code which deals with cases where it's unsettled and where we could petition...the relatives or the funeral home can petition the court and try to settle the matter. [LB441]

SENATOR LATHROP: Very good. Sort of a tiebreaker. [LB441]

WILLIAM LAUBER: Yes. [LB441]

SENATOR LATHROP: All right. And it would have solved Michael Jackson's problems. [LB441]

WILLIAM LAUBER: Probably not. [LB441]

SENATOR LATHROP: Probably not. I think they fought over his remains, didn't they? [LB441]

WILLIAM LAUBER: Oh, yeah. Yeah. [LB441]

SENATOR LATHROP: Okay. This will be the Michael Jackson bill from this day forward. Any questions of Mr. Lauber? I see none. All right, thank you. We appreciate your insight and your identification of the issue. [LB441]

WILLIAM LAUBER: Thank you. Thank you. [LB441]

GREGORY EASLEY: Senators and committee members, my name is Gregory Easley, E-a-s-l-e-y. I'm the president of the Nebraska Cemetery Association. I've been in the cemetery business for 39 years, and I am in support of this bill because as the funeral directors, they mentioned, they have...we have the same problems they have on who is going to be in charge of the property. A lot of people buy their property ahead of time, so we might have it here in Calvary or over at Wyuka or wherever. And sometimes there's disputes over them. When somebody dies you have three or four days to get things taken care of. Right now, 85 percent of the time it goes quite easily and everything is fine. But sometimes there's family disputes and there's arguments, and you take those arguments to the grave and you've got animosity that goes on for a long time. This bill will clear up a lot of that to make sure it moves along quickly and without...and what I like about that especially is that affidavit in there where you as a person living can say I want this person in the family or this person or this guardian to take care of things for me so I don't have a problem, because I know I've got a lot of disputes among my family members. My brother George Easley here, lives here in town. He has 12 kids. I don't know how you get 12 kids to agree on anything. So when something happens, he can designate one of those children to take care of everything and make those decisions and take it out of the hands of all 12 of them. And that goes

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with a lot of different families, arguments or alternative lifestyles, any of that sort of thing you can designate something that can solve a lot of problems. So we are also in favor of this. Thank you. [LB441]

SENATOR ASHFORD: Thanks, Greg. Any questions of Greg? Thank you for remaining here. The good thing about the Nebraska Legislature is we have public hearings for every bill. The bad thing is sometimes it takes awhile to get through them all, so thank you for remaining. Okay. Any other proponents? Any opponents? [LB441]

DON WESELY: Mr. Chairman, members of the Judiciary Committee, my name is Don Wesely, registered lobbyist for the Nebraska Association of Trial Attorneys. And we regularly oppose immunity provisions. There's an immunity provision in this bill. There is also an existing immunity provision in the existing statutes. But we don't like them whether they're in there now or in the future, so we're here to say we'd rather not have an immunity provision. And with the time late, I'll just stop at that. Thank you. [LB441]

SENATOR ASHFORD: I thought you were going to have something against cemeteries or... [LB441]

DON WESELY: (Laugh) [LB441]

SENATOR ASHFORD: I was trying to figure out where are they going with this, I mean. All right. [LB441]

DON WESELY: Thank you. [LB441]

SENATOR ASHFORD: Good comments. Well, I mean, there are good comments I guess. [LB441]

SENATOR LATHROP: Brief. They were brief comments. [LB441]

SENATOR ASHFORD: Yeah. John. [LB441]

JOHN LIAKOS: Yes, Senator. [LB441]

SENATOR LATHROP: Long day. [LB441]

JOHN LIAKOS: Well, being an opponent of the last bill I guess we could expect that. My name is John Liakos, L-i-a-k-o-s. I'm here on behalf of Nebraska Organ Recovery System. We refer to it by its initials, NORS, because it's such a mouthful. NORS has been in existence for about 37 years, and we have been here with the Legislature many times supporting various legislation relating to organ donation. [LB441]

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SENATOR ASHFORD: Arlene Nelson. [LB441]

JOHN LIAKOS: Excuse me? [LB441]

SENATOR ASHFORD: Arlene Nelson. Senator Nelson, my seatmate, was one of the first organ donor persons that she brought that legislation for you. [LB441]

JOHN LIAKOS: Yes. And NORS is the federally designated organ procurement organization for the state of Nebraska. This designation comes from HHS and we have...we're charged with having an organization that sets up the recovery of organs, the distribution, the complying with the allocation rules that are set up by United Organ Sharing, by HHS. And one of the things that we are constantly working on is increasing the amount of donations for organs and tissues that are used for transplant purposes. Now one thing I want to call to your attention, because there's a lot of confusion about the difference between tissue and organs. Organs must be taken from a body that has been declared dead but is still on some kind of support systems. Timing is absolutely critical in the recovery of organs because we can only keep that body viable for a certain amount of time. Tissues, depending upon the circumstances, we have anywhere from 24 to 48 hours after a person is declared dead. Now how does this relate to LB441? I've been sitting here listening to the testimony by the funeral directors, by the cemetery association, and I think their points are probably very well taken. However, we have a...we're using a baseball bat to kill a fly here. When I take a look at this bill, it's taking...it's getting into things that have been established by this Legislature for many years. We have the Uniform Anatomical Gift Act, we have the Revised Anatomical Gift Act that was passed by this Legislature in 2010 that went into effect January 1, 2011. It covers the areas of priorities which is in conflict with what you have in LB441. There's numerous areas where there's conflicts in LB441 with what we already have; for example, our coroner legislation, which some of you may have been involved in. And we have the donor registry which is the way that we have people can sign up either in writing or they can do it on the NORS Web site to become a donor under the donor registry. We have the Department of Motor Vehicles with the designation of their...to be a donor, with Bev Neth was just wonderful in helping us over the years to get this taken care of. Well, now this bill is providing for new provisions which are in conflict with all of these other bills that have been passed by the Legislature. There is the priorities... [LB441]

SENATOR ASHFORD: John, time out. I'm going to...let's see if there are any questions of John here. [LB441]

SENATOR LATHROP: Can I ask one? [LB441]

SENATOR ASHFORD: Yes. [LB441]

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JOHN LIAKOS: Sure. [LB441]

SENATOR LATHROP: Can you just tell me in a general way, without going through the laundry list, in what respect does this bill conflict with the bills you've just described which are generally anatomical gift bills? If you can just give it to us from 10,000 feet and not clear in the weeds. [LB441]

JOHN LIAKOS: I think probably the best way to describe this is the coroner legislation. Coroner legislation makes reference to coroners need to make a decision that will maximize the likelihood of success of an organ. This bill has different steps that have to be followed, delays that are built in to this bill which would have a great effect on organs. One of the areas that is of really concern of ours--this is kind of a touchy subject but we need to consider it--very young children, babies and very young children have a lot of heart problems, heart valve problems. Those children, the only way they can survive is if they get a valve transplant. There's no other kind of medication or procedures in most of these cases that can help them. When we have the death of a young child or a newborn, it's built into the coroner's legislation that the coroner has to make a determination whether there's any foul play or anything of that nature. If not, they release the body. We get those hearts for the valves so those valves can be transplanted. This bill right here has something built into it that's going to take days. [LB441]

SENATOR LATHROP: So to be very general about it, because Senator Seiler is going to need some direction on what to look for if there's going to be an amendment, you would say that this bill creates some delays that would affect the ability to maintain the viability of an organ or tissue that's provided for in other bills...or other statutes. [LB441]

JOHN LIAKOS: That would be the end result. I think that most of this bill is already covered in existing legislation. And if I was going to suggest changes to it, I would say keep in your things relating to...that affect funeral directors and your cemetery association. Let's get this stuff out of here that's already covered by existing legislation. [LB441]

SENATOR LATHROP: Okay. That answers my question, John. Thanks. [LB441]

SENATOR ASHFORD: Yes, Mark. [LB441]

SENATOR CHRISTENSEN: Thank you, Chairman. Aren't we just talking about here probably less than 15 percent of the deaths, just the ones that are in conflict and they're trying to determine who is...? Because typically, if you're trying to get organs, you're going to have that preplanned ahead of time. It's not going to be from the families that are fighting, because this...am I missing this bill? This is to set up the structure for those that are fighting and that might be that 15 percent. [LB441]

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JOHN LIAKOS: If there's 1 percent, that is too much, because if there is an organ that is denied to somebody, then it's 100 percent fatality. [LB441]

SENATOR CHRISTENSEN: I understand that part. [LB441]

JOHN LIAKOS: And that is what our concern is. We don't have room for error. We don't have the time that we can be involved in these procedures that are set forth in here. One thing, another place where it's really important, we have first-person consent in Nebraska under the Uniform Anatomical Gift Act. So if I give consent to give my organs, nobody in my family can change that. Under this bill they could, and that is of great concern to us because we have to rely upon if the person is on the donor registry, if they have signed a consent for donation or in some manner given some affirmative intent to be a donor, then we have to act immediately on that. And that's why we have the first-person consent that was approved by this Legislature and is true in almost all of the states. [LB441]

SENATOR CHRISTENSEN: Okay. Thank you. [LB441]

SENATOR ASHFORD: I don't...any other...I don't see any other. Thanks, John. Thanks for coming. [LB441]

JOHN LIAKOS: Okay. [LB441]

SENATOR ASHFORD: Would it be helpful for you to sit down with Senator Seiler, John? I mean, you probably know...you guys know each other, don't you, I'm sure. [LB441]

SENATOR SEILER: If he had been in one class earlier, he'd had known the answer to this. [LB441]

SENATOR ASHFORD: That's what I was thinking. I was thinking you're probably somewhat in the same class. Maybe you could just sit down and think about how to address some of these things. [LB441]

JOHN LIAKOS: And I think that if a committee was going to... [LB441]

SENATOR ASHFORD: Or even just you and Les. [LB441]

JOHN LIAKOS: ...study this, we would be welcome...we would welcome our invitation to join in with the committee. [LB441]

SENATOR SEILER: Give me a call, John. [LB441]

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JOHN LIAKOS: We will do that. Thanks, Senator. [LB441]

SENATOR SEILER: Because you are referred to on page 6, section (j), about this. I assume the State Anatomical Board is who you're talking about and it is referred to in this statute. But we'll talk about language you need. [LB441]

JOHN LIAKOS: Okay. [LB441]

SENATOR SEILER: Good to see you again. [LB441]

JOHN LIAKOS: Very good. Thank you. [LB441]

SENATOR LATHROP: You might invite Wesely to that too. [LB441]

SENATOR SEILER: Pardon? No, leave him out. [LB441]

SENATOR ASHFORD: Greg, yes. Do you have something you'd like to add? [LB441]

GREGORY EASLEY: I think a lot of what... [LB441]

SENATOR ASHFORD: This is totally out of order, so turn off all the microphones. [LB441]

GREGORY EASLEY: A lot of what pertains to us is after their body is dead, the body is at the funeral home. [LB441]

SENATOR LATHROP: That's where the fight is for Michael Jackson. [LB441]

GREGORY EASLEY: That's where the fight is. It's not with the Anatomical Board. I mean... [LB441]

SENATOR ASHFORD: Okay. Well, I think that I have total trust in John Liakos and Les Seiler to forge this compromise or whatever we need to do. [LB441]

SENATOR LATHROP: And we'll be right there with stem cells and CIR and community colleges. [LB441]

SENATOR ASHFORD: Do we have anybody else who wants to testify? Okay, we're finished. [LB441]