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Transcriber's Office

Judiciary Committee
January 30, 2014

[LB770 LB857 LB877 LB933 LB934]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 30, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB770, LB877, LB857, LB934, and LB933. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Ernie Chambers; and Al Davis.

SENATOR ASHFORD: Welcome, everyone. We have five bills today. First introducer is Senator Wallman, LB770. Let me just remind everyone that, as Senator Wallman comes up, that most of you have been here, obviously, before, but some I don't recognize. So we have a light system that has three lights. When it gets to yellow, we'd ask you to start summing up your comments. And then red is ejection. There's an ejection device under the seat, especially for Don Kleine. He has to know that if he goes over three minutes it's really trouble. So anyway, Senator Wallman. [LB770]

SENATOR WALLMAN: Thank you, Senator Ashford and members of the committee. For the record, my name is Norm Wallman, W-a-l-l-m-a-n. I'm here today to introduce LB770. LB770 adds a new definition to the term "destructive device." This would add cannon, mortar tube, or other device that is homemade and noncommercial and utilizes black powder, black powder substitutes, pyrotechnic compositions, smokeless powder, or any flammable or liquid petroleum gas. This expansion is designed to encompass items that are being found during incident investigations by various law enforcement entities. Additionally, LB770 would remove current language which requires that destructive devices must be designed to be used or are used as a weapon against a person or property. So my office has been in contact with Nebraska Firearms (Owners) Association. We know as the bill is currently written they have some significant concerns and, therefore, will be testifying in opposition today. They have been working with the Nebraska Fire Marshal's Office to address these...those concerns. And I believe that the two groups can find language that accommodates both of them. So our office looks forward to the continued dialogue. And there will be others following me that can answer some of your questions. Thank you. [LB770]

SENATOR ASHFORD: Okay. Any questions of Senator Wallman? I don't see any. Are you going to stick around for awhile or...? All right. Do we have any testifiers for the bill? Fire Marshal's Office is here; State Patrol. Good afternoon. [LB770]

JIM HEINE: (Exhibit 1) Good afternoon, Senators. Chairman Ashford and members of the Judiciary Committee, for the record my name is Jim Heine, J-i-m H-e-i-n-e, and I am the State Fire Marshal. I am here today to testify in favor of LB770. LB770 would change...would add language to state Statute 28-1213 so that the definition of a destructive device would include cannon, mortar tube, or a device that is homemade and noncommercial and utilizes black powder, black powder substitute, pyrotechnic

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compositions, smokeless powder, or any flammable or liquid petroleum gas. This language is needed to address the problem of dangerous devices that are being found but do not currently meet the listed definitions of a destructive device. Each year, the State Fire Marshal agency investigates numerous incidents involving the misuse of fireworks and explosives. These incidents result in both property damages and injuries. This year alone, there were four incidents that resulted in substantial injuries to innocent bystanders and participants. For example, in one incident a male attempted to build a mortar tube by welding a piece of pipe to a disc blade and then packing it with black powder. The resulting explosion caused shrapnel wounds to both a juvenile male who required stitches for his head injury and a juvenile female who suffered internal injuries so severe she had to have an emergency flight to a trauma center for a major surgery and remained in intensive care for a significant period of time. This incident also resulted in property damage to numerous vehicles and two cabins when the shrapnel penetrated the walls. The victims involved in the incident were merely as bystanders who attended a family gathering. They were not involved in and had no knowledge of the device being constructed or that it was going to be set off. In another incident, three juvenile males attempted to shoot off illegally obtained Class B fireworks, which are classified as explosives, using a homemade device consisting of a mortar tube, a five-gallon bucket, and river rock. The device failed and one of the juveniles suffered severe facial, cranial, and hand injuries that resulted in permanent, lifelong deformities. In another incident, a woman suffered severe facial injuries, also resulting in permanent deformities, when she was struck in the face by debris fired from a small, homemade cannon. She was not involved in any of the cannon's construction or its use. She was simply at a public gathering. LB770 would also remove language in state Statute 28-1213 that requires these destructive devices to be used as a weapon against any person or property. The need for this removal is illustrated in the examples listed above. None of the examples describes a scenario in which the persons creating the device had the intention of making a weapon to be used against people or property. But the harm that was caused to both people and property was tremendous. Explosive usage is an ultrahazardous activity, and the very nature of such materials demands that they be treated with extremely high level of caution and sound judgment. As we discussed above, the victims of their misuse are often innocent bystanders who have no way to mitigate the danger or try to avoid the harm because often the victims do not even know the device exists. When homemade devices are... [LB770]

SENATOR ASHFORD: I'm going to...we're going to have to call a time-out or we're going to have some sort of device, explosive...not explosive device. [LB770]

JIM HEINE: Do you want me...get it. [LB770]

SENATOR ASHFORD: Those would be illegal in the Capitol. [LB770]

JIM HEINE: I hope not. [LB770]

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SENATOR ASHFORD: But some other kind of a device that will...no, but let's see if we have any questions, and congratulations on your position. [LB770]

JIM HEINE: I should have read faster. Certainly. [LB770]

SENATOR ASHFORD: You haven't been here since your elevation to the Fire Marshal's position, so congratulations. [LB770]

JIM HEINE: No, Senator, I sure haven't. [LB770]

SENATOR ASHFORD: Do I have a...yes, Senator Coash. [LB770]

SENATOR COASH: Thank you, Senator Ashford. Mr. Heine, so by...since it's not part of this bill, I'll ask you if you know. We're adding a bunch of things that would...we're adding to the list of things that would become unlawful, correct? [LB770]

JIM HEINE: I'm sorry. I didn't hear you, sir. [LB770]

SENATOR COASH: We're adding to the list of things that are currently against the law, right? I mean, I... [LB770]

JIM HEINE: They're defined as an explosive device, yes. [LB770]

SENATOR COASH: They're defined as an explosive device. And so since it's not part of the sections that Senator Wallman was trying to amend here, so what's the current penalty if you find somebody has used a destructive device? [LB770]

JIM HEINE: You're talking the homemade cannons and mortar tubes, is that correct? [LB770]

SENATOR COASH: Well, yeah, or anything that's already currently in the law, like bottle bombs, Molotov cocktails. I mean... [LB770]

JIM HEINE: As far as the penalty now for the homemade cannons which was...and the mortar tubes and other devices that we want to add, there is no penalty for them because they are not included. [LB770]

SENATOR COASH: They're not defined, right. What's the penalty for the things that are already in the law? [LB770]

JIM HEINE: I'm going to refer that...the Colonel Sankey is going to testify and I'm going to defer to him. [LB770]

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SENATOR ASHFORD: I think it's a felony IV, Colby. [LB770]

SENATOR COASH: Okay. [LB770]

SENATOR ASHFORD: Our legal counsel over here has pointed out it's a felony IV. [LB770]

SENATOR COASH: Okay. Well, we'll defer to the colonel then. Thank you. [LB770]

JIM HEINE: On that part of it, yes, but anything else I can answer. [LB770]

SENATOR COASH: Okay. Thank you. [LB770]

SENATOR ASHFORD: And I assume, I mean, I'm not an expert in these matters, but if a pyrotechnic composition is...what is that? [LB770]

JIM HEINE: It could be a lot of things, but it is mainly...we call pyrotechnic composition what is in fireworks. [LB770]

SENATOR ASHFORD: Right. So if you have another device, I mean, it's...I'm sorry. I mean, you didn't write the bill, but... [LB770]

JIM HEINE: No. [LB770]

SENATOR ASHFORD: A cannon, mortar tube, or other device is a teeny bit broad. Other device is...it could be a beer bottle or...that you put a firecracker in and you shoot it up in the air. [LB770]

JIM HEINE: Well, the pyrotechnic composition was added because there are...at times, there are people that are purchasing fireworks and taking them apart and using the pyrotechnic composition that's in the fireworks... [LB770]

SENATOR ASHFORD: Okay. [LB770]

JIM HEINE: ...to put in a cannon or a mortar tube. [LB770]

SENATOR ASHFORD: Okay. Is it fireworks we're worried about here or...the example you gave was not fireworks. It was black powder. Is it black powder that is the main concern or is it decomposing, so to say, pyrotechnic...? [LB770]

JIM HEINE: Well, whatever component you're using in the cannon or mortar tube is extremely and inherently dangerous. So if they're using... [LB770]

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SENATOR ASHFORD: Okay. But my only concern is we're talking about a felony IV here which is a...you know, is punishable by imprisonment, not always is but can be, and, you know, we want to be very specific but...about what we're trying to prohibit here. So...but anyway, any other questions of the Fire Marshal? I don't see any. Thank you, sir. [LB770]

JIM HEINE: Thank you, Senator Ashford and committee. [LB770]

SENATOR ASHFORD: Okay, the colonel is going to clarify all these matters for us. [LB770]

DAVID SANKEY: (Exhibit 2) Oh, I don't know about that. I'll try. Thank you. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is David Sankey, D-a-v-i-d S-a-n-k-e-y, and I serve as the superintendent of the Nebraska State Patrol. I appear before you today in support of LB770. I'd like to express our appreciation to Senator Wallman and his staff for their work in sponsoring this bill. The Nebraska State Patrol and the Nebraska Fire Marshal's Office share a common goal of public safety when regulating and enforcing state statutes which deal with the production, storage, distribution, and use of fireworks and explosive devices. This past year, an increase in injuries occurred due to improvised explosive devices. After discussions with the State Fire Marshal's Office due to these events, it was realized that the current Statute 28-1213 needed to be revised for the safety of the public. Destructive devices and forbidden explosives need to be further defined in the current statute. Devices that are homemade and noncommercial, such as cannons, mortar tubes, and other similar devices, do not offer the public the commercial protections and safety testing that manufactured goods provide. As you may have noticed, the other change proposed in this bill concerns the intent or purpose for use of the device. Under the current law, if the purpose of the destructive device is not to use it against persons or property, no matter how inherently dangerous the item is, there is no violation of law. It is difficult to read someone's mind as to how they intend to use the device. Enforcement under the current law is problematic. The change proposed would ban the possession of such inherently dangerous devices due to their dangerousness, regardless of the intent or how they would be used. The State Patrol supports LB770 and encourages you to advance the bill to General File. I'd be happy to answer any questions you might have. [LB770]

SENATOR ASHFORD: Colonel, what if you had a...so you were a collector of antique weapons and you wanted to do a reenactment type of an event and you utilized one of those weapons or, you know, antique devices and used that as a device and used black powder? I assume that would be a per se violation. I mean, you're...someone was...someone has to be injured here, don't they? Or is it just the shooting of the device? [LB770]

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DAVID SANKEY: It's possessing. [LB770]

SENATOR ASHFORD: So... [LB770]

DAVID SANKEY: What we would ask for here is if somebody is in possession of it because what we've found is it's very difficult to prosecute when we have something like this occur because it's hard to prove that the individual tried to harm somebody else with it. But that's ultimately what's happened is you have an event, people gather around, somebody makes a homemade device, such as this, puts pyrotechnic composition into the tube to have an explosion and somebody else, some bystander gets hurt. So what we're asking is to take the intent language out and to... [LB770]

SENATOR ASHFORD: So, okay, if you bought an army surplus mortar tube and utilized it, it would not be a violation of this? [LB770]

DAVID SANKEY: It wouldn't be homemade. It wouldn't fall under that definition. [LB770]

SENATOR ASHFORD: So...or if you purchased an army surplus or military surplus cannon, that per se would not be a violation, even though it was... [LB770]

DAVID SANKEY: Not to my knowledge, sir. [LB770]

SENATOR ASHFORD: Okay. So you're talking about... [LB770]

DAVID SANKEY: I think what we're trying to get is the homemade devices that people try to create themselves. They often... [LB770]

SENATOR ASHFORD: Is that from scratch or does it have to... [LB770]

DAVID SANKEY: Yeah. They'll get some...they'll try and weld some pieces of metal together and generally what happens is the welds aren't...they aren't substantial. [LB770]

SENATOR ASHFORD: Okay. [LB770]

DAVID SANKEY: And then they explode and people get hurt. [LB770]

SENATOR ASHFORD: Okay. [LB770]

DAVID SANKEY: And so that's what we're trying to avoid here. [LB770]

SENATOR ASHFORD: Okay. All right. I think I understand. Yes, Senator Seiler, and

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Senator Coash. [LB770]

SENATOR COASH: Thank you. [LB770]

SENATOR ASHFORD: Oh, Senator Coash, then Senator Seiler. [LB770]

SENATOR COASH: Okay. Thank you. [LB770]

SENATOR ASHFORD: Just Senator Coash had asked a prior question, so I wanted to... [LB770]

SENATOR SEILER: Sure. [LB770]

SENATOR ASHFORD: Go ahead, Senator. [LB770]

SENATOR COASH: Thank you, Colonel. Do you know, what is the penalty for possession of the things that are currently in the law? [LB770]

DAVID SANKEY: For explosive devices it's a Class IV felony. [LB770]

SENATOR COASH: Class IV felony. Do you think by banning these or banning the possession of these it's going to prevent people from doing it, or is what you're after, once they do that, it's easier for you to prosecute or to convict them? [LB770]

DAVID SANKEY: Our intent would be for both. [LB770]

SENATOR COASH: Okay. [LB770]

DAVID SANKEY: It would be easier for our people to be able to prosecute individuals that do possess these devices and, therefore, our intent would also be for folks to not be using them, so to know that's something they should stay away from and not go down that road. [LB770]

SENATOR COASH: I'm just thinking as a practical matter of a knucklehead who would try to make his own bomb probably is not going to read 28-1213 to make sure it's okay first. [LB770]

DAVID SANKEY: Probably not. But I think if they...if he is associated with individuals that are engaged in that kind of activity and that maybe one of the other individuals might have been prosecuted under it, I think the word would get around. [LB770]

SENATOR COASH: Okay. All right. Thanks, Colonel. [LB770]

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DAVID SANKEY: Yeah. [LB770]

SENATOR ASHFORD: Senator Seiler. [LB770]

SENATOR SEILER: Yeah, I have two questions on this. One is whether or not the...I haven't looked at the statute. But looking at the summary which we were provided, it says, cannon, mortar tube, and other devices that is homemade. It looks like it's referring to only one of those and I believe that language ought to be changed to "which are,"... [LB770]

DAVID SANKEY: Okay. [LB770]

SENATOR SEILER: ...because I think that's what you intended, that all of those be homemade, because a cannon, like he said, could be a cannon on wheels that are used by re-enactors. But I think you intended, or whoever drafted this intended, it to be against or to refer to homemade and noncommercial are against those items. [LB770]

DAVID SANKEY: Correct. That's correct, Senator, yes. [LB770]

SENATOR SEILER: And then the last I had is I have a little trouble with a Class IV felony being five years in the State Penitentiary for this type of a crime. Did...was there any discussion with your group as to lowering that to a misdemeanor? [LB770]

DAVID SANKEY: No. Our discussion...the discussions that I'm aware of were mostly about expanding the definition and removing the intent, not about the penalties. [LB770]

SENATOR SEILER: Okay. It seems like a little excessive for possession. [LB770]

DAVID SANKEY: Something to consider, I think, yes. [LB770]

SENATOR SEILER: Okay. Those are all...that's all I have. [LB770]

SENATOR ASHFORD: Thanks, Senator Seiler. Thanks, Colonel. [LB770]

DAVID SANKEY: Okay. All right. Thank you, sir. [LB770]

SENATOR ASHFORD: Anyone else like to be...come up and talk for the bill? How about in opposition to the bill? [LB770]

RODNEY MOELLER: Senator Ashford, committee members, good afternoon. My name is Rod Moeller, R-o-d M-o-e-l-l-e-r. I'm representing the Nebraska Firearms Owners Association today. We had some concerns with some of the language that was in this bill. Certainly, I can understand the spirit of which the Fire Marshal's Office is trying to

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address. We have had some very good conversations between each other's organizations and we've been making some progress. But as it was submitted, one of our primary concerns is that we're having a very dramatic change in the approach to how this is listed. We're going from a de facto...everything is allowed except for this defined list of things that are prohibited and we're inverting that. We're saying everything is disallowed except for the defined exceptions. And we're very concerned that when you take that approach that you could inadvertently omit some legitimate hobbyist functions. Our interest is protecting the legitimate uses of any types of explosives, firearms, and whatnot. We were concerned that perhaps this could apply to people who reload, people who were involved in Civil War reenactments, dealing with muzzleloaders, people who are using kits to assemble something from a kit, or other types of things. Maybe they're manufacturing their own cannons. Keep in mind that today's hobbyist is potentially tomorrow's entrepreneur. Who knows, maybe somebody comes up with a whole new industry. We're looking out for those who have legitimate hobbyist interests and wanting to make sure that we don't clamp down too tightly on those legitimate purposes. Those are pretty much the activities that we were concerned about protecting. And we have had some very good progress in having a number of our concerns addressed, and so we're hopeful that we can work on refining that language just a little bit more. [LB770]

SENATOR ASHFORD: Senator Coash. [LB770]

SENATOR COASH: Thank you. Rod, do you know people who make cannons and bombs as a hobby? [LB770]

RODNEY MOELLER: We... [LB770]

SENATOR COASH: I mean, the Civil War reenactment, I get; reloading your shells, I get that. But... [LB770]

RODNEY MOELLER: Yeah. We do have a member who was on our forum who described he actually has some rather industrial-grade metal lathe and he does get some rather large stock and turns his own cannon barrels and manufactures them from... [LB770]

SENATOR COASH: He makes cannon... [LB770]

RODNEY MOELLER: I mean, good, quality stock from the beginning. I personally have never seen something like that. It's not a particularly common activity amongst our members, but we do have members who are involved in that. We also have some members who build, you know, mortars, been perfectly safe. [LB770]

SENATOR COASH: Okay. Thank you. [LB770]

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SENATOR ASHFORD: Thanks, Rod. And you're going to keep working with the Fire Marshal--is that correct?--and Senator Wallman and... [LB770]

RODNEY MOELLER: Absolutely. They have been...yeah. [LB770]

SENATOR ASHFORD: Yeah. [LB770]

RODNEY MOELLER: We've got a good working relationship with the State Patrol, State Fire Marshal's Office, and the good senator, so. [LB770]

SENATOR ASHFORD: All right. Thank you very much. [LB770]

RODNEY MOELLER: Thank you. [LB770]

SENATOR ASHFORD: Next opponent. Neutral? Senator Wallman? Waives closing. All right. My goodness. All right, let's move on to I think Senator Harr. Is that right, LB877? We're going to get Senator Harr here on one of these. You're...you're fabulous, Andy, don't get me wrong. [LB770 LB877]

ANDY HALE: Sure. [LB877]

SENATOR ASHFORD: You're great at what you do. [LB877]

ANDY HALE: (Exhibits 3 and 4) Thank you, Brad, thank you. [LB877]

SENATOR ASHFORD: Okay, LB877. [LB877]

ANDY HALE: Chairman Ashford and members of the Judiciary Committee, I am Andy Hale, A-n-d-y H-a-l-e, and I am Senator Burke Harr's legislative aide. Senator Harr is introducing two other bills right now in other committees and could not be here. Senator Harr represents the midtown Omaha area, which is comprised of the Dundee, Benson, and Keystone neighborhoods. LB877 was brought to us on behalf of Douglas County Attorney Don Kleine, who is here today. It's a very simple and a very straightforward bill. It adds language to Nebraska Revised Statute 28-1205, which addresses the use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony, a separate and distinct offense; and proof of possession. LB877 includes the term "a facsimile firearm...a nonfunctioning firearm" as it relates to a deadly weapon. It adds a section to include use of a facsimile firearm or nonfunctioning firearm to commit a felony as a Class III felony. LB877 defines a facsimile firearm as "an instrument which could reasonably be perceived to be a real firearm which includes, but is not limited to, a replica gun, an imitation gun, a BB gun, a pellet gun, a paintball gun, a toy gun, a lighter gun, or any other instrument that is fashioned to be perceived as a

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real firearm by a reasonable person." Right now, current law does not allow for a fake or a nonfunctioning firearm to be considered a deadly weapon. In order to qualify as a deadly weapon, the prosecutor would have to prove that the firearm was a real, functioning firearm. And I'll give an example. If you have a firearm that's had its firing pin removed--so you have a real, actual firearm that will not fire because the firing pin is removed--it would never be charged as a deadly weapon because it is not a functioning firearm, even though it's a real firearm. You are giving the bad guy a benefit. He enjoys the benefit of having the victim believe he is carrying a functional firearm without having to face the consequences of actually carrying a functional firearm. You are, really...basically, what you're doing is you're benefiting the offender's conduct and not what's going on. LB877 corrects the loophole in the law. And I'll be happy to ask (sic) any other questions. And as I said before, Don Kleine is here from the Douglas County Attorney's Office, and he could probably provide some examples and a little more thought behind this. [LB877]

SENATOR ASHFORD: Thanks, Andy. I don't see any questions. [LB877]

ANDY HALE: Great. [LB877]

SENATOR ASHFORD: So, Don. [LB877]

DON KLEINE: Good afternoon. Don Kleine, K-l-e-i-n-e, the Douglas County Attorney. I'm here testifying as the Douglas County Attorney in support of LB877, along with the Nebraska County Attorneys Association and the Omaha Police Department. LB877 comes into play because if you...if you...when we have a situation where somebody comes into, say, a Kwik Shop, pulls something out to the intended victim, threatens them to give them the money, or a bank teller, or whoever you want to call...or just another individual, and the individual who's being victimized isn't an expert on firearms, they testify later and they get asked the question: Was it a real gun; or do you know if it was a real gun; or could it have been a toy gun? They say, well, it could have been a toy gun; I really don't know. That takes us out of the picture of being able to prosecute that person. The jury instruction that judges give is: in the legal definition of a firearm--which we are not going to change--calls a firearm an instrument this is used to propel shot, shell, or bullets by the action of gunpowder exploded within it; a firearm is a deadly weapon. That's right out of the jury instructions, the Nebraska jury instructions. So it's got to be...for us to charge use of a firearm, it's got to be a firearm. A deadly weapon is...the jury instruction I have in my hand states, anything that is used or intended to be used in any way that could produce death or serious injury...included within this definition of firearm. So under the jury instructions, if we don't have the gun, or the person who is the intended victim can't testify it was a firearm, we lose that capability to prosecute. Many other states have this definition of a facsimile firearm. We've lowered the penalty on that: if we can't prove it's a real firearm, the facsimile firearm is a Class III felony, versus if it's a actual firearm, it's a Class II felony. But the

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intended victim here shouldn't have to say, well, let me take a better look at that thing that you're showing me so I can determine if it's really a gun, if you're really going to be able to shoot me or not, or that...actually get shot by it. So I think this makes sense from a law enforcement perspective. If the purpose of the perpetrator is to make the victim think they have a firearm, whether it's a toy gun, a starter pistol, a BB gun, then I think they should be prosecuted for the use of this facsimile firearm. That's the intent here. I think it's a very good law, and I'd like to see the Legislature pass something that would help us in that regard. Again, the problem gets to be, if we don't have the firearm, the person gets rid of it, the person on the other end of it doesn't really know firearms and isn't able to describe it or say that it was a real gun, then we lose the capability of prosecuting that person for their intent to put that person in fear by using what may be a toy gun, may be a starter pistol, whatever it might be, something that's even in their pocket that they hold at that person to make them think they have a gun. And again, I don't think the victim has to say, well, let me take a better look at that so that I can determine if it's a real gun that's going to shoot me or not. So that's the purpose of this amendment to the statute. And I would ask the Legislature to please pass this law. And is there any questions? [LB877]

SENATOR LATHROP: I apologize, I just walked in late. I've been over in Revenue. [LB877]

SENATOR ASHFORD: Senator Lathrop has arrived. [LB877]

SENATOR LATHROP: But I do have a question... [LB877]

DON KLEINE: Yeah. [LB877]

SENATOR LATHROP: ...for you, Don. I see it's a Class III...or the bill would make a Class III felony. What if...what would the class be or what level of felony would it be if they actually had a working firearm? [LB877]

DON KLEINE: Then it's a Class II. And, actually, it's a mandatory minimum; it's 5 to 50. If it's a...if we can prove it's a firearm and we have...we have a firearm and we have testimony that show it's a firearm, then it's a Class II. We've lessened this to say if you...if we can't prove that or if the person says, well, it was a toy gun or it was a starter pistol or it was a nonfunctioning firearm, then it becomes a Class III felony. So we've lessened... [LB877]

SENATOR LATHROP: But at the Class II it's...there's a mandatory minimum. [LB877]

DON KLEINE: Yes. [LB877]

SENATOR LATHROP: And it gets consecutive to... [LB877]

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DON KLEINE: And this is still... [LB877]

SENATOR LATHROP: ...the robbery or whatever else they're charged with. [LB877]

DON KLEINE: Right. And it's still consecutive. I think the statute still requires it to be consecutive. [LB877]

SENATOR LATHROP: This would be consecutive too? [LB877]

DON KLEINE: Right. But there's not...I don't think there's a mandatory minimum that's on that statute. It's simply a 1-to-20, which is a Class III. [LB877]

SENATOR LATHROP: And you may have said this before, but are you having trouble with some of these? [LB877]

DON KLEINE: Well, certainly...well, I read the jury instruction. The jury instruction that jurors get with regard to a...we've charged a "use of firearm" case as...defines a firearm, which is...by law, a "firearm" means any weapon which is designed to or may be readily converted to expel any projectile by the act of an explosive or gunpowder. And "deadly weapon" is a...anything that is used or intended to be used that could produce death or serious bodily injury. So, many times, if we don't have the firearm, and the person who's on the other end of the firearm can't say that they've ever seen a firearm before or they know it's a real firearm, then we're...we're...we have a problem; it's a proof problem. [LB877]

SENATOR LATHROP: Okay. [LB877]

DON KLEINE: And I don't think that a person should just get away with using something else that...their intent is, obviously, to put you in fear by pointing this at you, to take your money from you, because we don't have the actual firearm there. [LB877]

SENATOR LATHROP: Okay. [LB877]

DON KLEINE: So this gives us that option there. And I...as I said, I think it's a good tool. And I think it's something that's necessary, because we don't always have the firearm; the people get rid of it, or the victim isn't an expert enough to testify that, in their mind, it is a firearm. And there's a legitimate question that's asked by defense counsel saying, well, could it have been a toy gun? And the person says, well, it could have been; I really don't know. [LB877]

SENATOR LATHROP: Okay. [LB877]

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DON KLEINE: And I don't think that a person has to get shot for us to be able to prosecute this person for... [LB877]

SENATOR LATHROP: Yeah, let's hope not. [LB877]

DON KLEINE: ...to some extent, for if they use something that's not a real gun. [LB877]

SENATOR ASHFORD: And this would take into consideration those times when there is no gun, I mean, there isn't a gun. You have the testimony of the person behind the counter, and you can't prove it's a real gun, but there was a gun; I can't say whether it was real or not, but I know it was there. [LB877]

DON KLEINE: Right, because the person who had the gun... [LB877]

SENATOR ASHFORD: Right. [LB877]

DON KLEINE: ...in their hands, or what looked like a gun, didn't fire it at me. [LB877]

SENATOR ASHFORD: Right. [LB877]

DON KLEINE: You know, so... [LB877]

SENATOR ASHFORD: Right, so you don't have to produce the weapon. [LB877]

DON KLEINE: Right. [LB877]

SENATOR SEILER: Mr. Kleine, I think you've explained it, but I just caught it. Is this penalty for having this imitation gun or false gun an enhancement to the penalty that he receives, or is it a separate crime that is stacked? [LB877]

DON KLEINE: No, it's a separate...you know, so you could be charged with robbery and... [LB877]

SENATOR SEILER: It's not like a habitual criminal, that you... [LB877]

DON KLEINE: No. [LB877]

SENATOR SEILER: ...find him and then you stack... [LB877]

DON KLEINE: No, it's a separate crime that... [LB877]

SENATOR SEILER: Okay. [LB877]

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DON KLEINE: ...we have to prove the elements of that particular crime, robbery, and then the use of the firearm or use of the facsimile firearm. [LB877]

SENATOR SEILER: That's fine. Does this statute change help you with your police officers that come upon a scene and a guy has an imitation gun and the police officer fires? [LB877]

DON KLEINE: Well, I think it falls in line with that. If you look at the use of deadly force statute and the use of self-defense jury instruction, it says, if the person has a reasonable belief that they need to use deadly force to defend themselves, and they could even be mistaken. And that's... [LB877]

SENATOR SEILER: I just wondered if this helped you any. [LB877]

DON KLEINE: Right. It does, in that regard. [LB877]

SENATOR SEILER: Okay. Thank you. I have nothing further. [LB877]

DON KLEINE: Sure. [LB877]

SENATOR ASHFORD: Thanks, Don. [LB877]

DON KLEINE: Thank you. [LB877]

SENATOR ASHFORD: Anyone else here in support of LB877? In opposition to LB877? Rod. [LB877]

RODNEY MOELLER: I apologize, I'm actually testifying neutral. [LB877]

SENATOR ASHFORD: Oh, are you? Well, we'd better go to...we don't want to go out of order; we don't want to put you in the opposition area. [LB877]

CHRIS EICKHOLT: We don't have any doubt where we're at on this subject. [LB877]

SENATOR ASHFORD: You may be opposed, right. We don't want to assume anything, however. [LB877]

CHRIS EICKHOLT: (Exhibit 5) No. (Laugh) Good afternoon, Chairman Ashford and members of the committee. Chris Eickholt, E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. I'm having a letter distributed...or a letter is being distributed that our organization wrote detailing some of the reasons that we have in opposing the bill. Essentially we're opposed to the bill because of the language of the bill itself, the intended policy of the bill, and also, sort of, the effect of

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the bill insofar as it just adds one more consecutive sentence that can be compounded and added on to a whole series of felonies that our clients are typically charged with. One thing that Mr. Kleine talked about was the frustration that prosecutors have if they cannot get a victim--and the example he gave in a Kwik Shop robbery--to testify as to what was used as an actual firearm. The victim can certainly testify that they were in fear and can describe what happened in that Kwik Shop, and that defendant is, therefore, guilty of a robbery. That's a Class II felony, 1 to 50. The defendant could be guilty of terroristic threats. So when Mr. Kleine explained that there's nothing he could do, that's not quite right. A person may not be found guilty of the use of a firearm because the gun can't be found, no one knows for sure if it's an actual firearm, but that does not mean the person just simply walks. That's not accurate. Right now, the state does not need to prove...in order to convict somebody of use of a firearm, the state does not need to prove that that firearm was operable. That's case law in Nebraska for 30-40 years. State v. Clark, 2002 Supreme Court case, I'll get those to counsel. The state does not need to prove that the gun actually worked, that the gun was even capable of firing. The state simply needs to prove that it was a firearm. The definition of this bill overlaps and really does not distinguish between an actual firearm and what they purport to say is a facsimile firearm. What makes an actual firearm a firearm, and Mr. Kleine read the jury instruction, is something that's capable of propelling a device by explosion of gunpowder or something. This bill adds facsimile firearm examples of BB guns, pellet guns, replica guns, but it doesn't say what those guns are and how they differ from actual firearms. We might think a BB gun is something that's powered by air, but the bill does not say it. Replica guns, often, are just like firearms in the sense that they can fire projectiles with gunpowder. Oddly, an unintended effect of this, since it gives the example of a nonfunctioning firearm, the state is now going to have to prove that the firearm was actually functioning, if they want to find somebody guilty of the consecutive Class II felony instead of the consecutive Class III felony. The bill itself, as I said before, in the letter I distributed, has vague definitions of some of these terms. And I ask the committee to keep in mind that these things are crimes. When someone goes into a Kwik Shop and says they have a gun, pretends like they have a gun, and takes something of value, that is a robbery. And they go away to prison for a long time. If they keep that clerk there for a while and doesn't let them leave, that's felony false imprisonment. If they put that person in fear because of the recklessness of their actions, that's terroristic threats. And adding another consecutive count is just going to add to the prison population. [LB877]

SENATOR ASHFORD: Yes, Senator Seiler. [LB877]

SENATOR SEILER: Why do you think he carried an imitation gun in the robbery in the first place? [LB877]

CHRIS EICKHOLT: Sometimes that's all they have. [LB877]

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SENATOR SEILER: Right. [LB877]

CHRIS EICKHOLT: They can't get ahold of a real gun. [LB877]

SENATOR SEILER: And he's...to hold the person in fear. [LB877]

CHRIS EICKHOLT: That's right. [LB877]

SENATOR SEILER: So why shouldn't we penalize that as the crime? [LB877]

CHRIS EICKHOLT: You certainly should. That person should be charged with robbery. It's wrong to put someone in fear. [LB877]

SENATOR SEILER: Well, no, it's not...the robbery is a separate incident. [LB877]

CHRIS EICKHOLT: That's right. [LB877]

SENATOR SEILER: Carrying the imitation gun is a separate crime, according to this bill. [LB877]

CHRIS EICKHOLT: That's right. Well, it's...it's a separate crime, because it adds to the use of a firearm. Before the jury can find someone... [LB877]

SENATOR SEILER: It's not an enhancement; I already clarified that. It's a separate crime, and it stacks...and...in the possession of the...or as our statutes say, it's got to be held consecutively. [LB877]

CHRIS EICKHOLT: That's correct. In order for a person to be found guilty of using that imitation gun, if the bill is passed, the jury would first have to find them guilty of the underlying felony, of the robbery. [LB877]

SENATOR SEILER: Right. [LB877]

CHRIS EICKHOLT: And we would argue that's, in many respects, a lot of time; 1 to 50 is a lot of time. The problem that we have is that this gives the state another opportunity to stack another use charge. For instance, the Kwik Shop example: a person is charged with robbery, terroristic threats, false imprisonment; the state then adds three consecutive counts on all three of those. You are looking at a de facto life sentence. Procedurally, it's difficult to really do much as a defense attorney. And no one should really care about that, necessarily. But if you've got someone with a defense, a meritorious defense, of insanity or of intoxication or something like that, you can't risk it. If you get found guilty of this, with this mandatory consecutive sentences, you're going to...you're in prison for life. That's the frustration. It's not that we think that people should

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be able to go into Kwik Shops with a fake gun and terrorize and scare people. It just simply is this is just more piling on of a consecutive sentence for things that are already criminal and prohibited under the law. [LB877]

SENATOR SEILER: I don't see it as a pile-on. I see it as a separate offense. And it shouldn't be worried about whether or not...if he's found guilty by that jury, it's a separate offense, just like you were saying harassment or the others that are being added. [LB877]

CHRIS EICKHOLT: Okay. [LB877]

SENATOR SEILER: Nothing further. [LB877]

SENATOR ASHFORD: Chris, the only...and I just might make a comment now, because we're going to be getting into your comment about increasing the prison population. I think we're going to be spending a lot of time in this committee on that issue. That's an...and this is not a criticism of your testimony whatsoever; I understand your position. I also understand Senator Seiler's position as well, because I think it's...but I think, you know, when we talk about the...and as we get into this debate next week and talk about it, as...you know, there are going to be serious things that happen out there that...such as using a weapon or a facsimile weapon or whatever. We don't...you know, this Legislature has been very tough on firearms, and we have made mandatory minimum sentences for firearms in LB63; I think Don was supportive of that, as was the Attorney General at that time. It's just, the potential for danger in our...is so massive. And then the discussion about, you know, how we alleviate the prison overcrowding is clearly an issue that we're going to have to address. But just to kind of sound a...not an alarm but just a note of caution here, is that having a particular sentence for a particular crime is, in my view, a separate issue from how do we alleviate the prison population, because I think there are numbers of crimes...50 percent of our incarcerated individuals are there for nonviolent offenses. And I think we can make, you know, significant inroads into that and still keep our public safe. So I'm not, trust me, Chris, I'm not critical of your argument, because I...my son is a public defender, and he has the same belief about consecutive sentences; he's doing his job. But I think, you know, that's my only caveat, not...and you just happen to be sitting there. That's a separate debate; it's a separate issue; and we're going to have to address it. But anyway, I appreciate your comment. Anyone else? I don't see... [LB877]

SENATOR LATHROP: Maybe just an observation, but isn't this better for the criminal defense guys or the criminal defendant? It makes it clear that if you're going to get charged with the only thing that's available right now, that somebody had better be able to show that thing could shoot. And now we have something that's less than that; it makes clear that there's a distinction between just having a gun and having a gun that can actually work. And this makes it clear that it's got to be...look like a gun or act like a

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gun but not be a gun. So the finger in the coat, you know, kind of one of these things... [LB877]

CHRIS EICKHOLT: Um-hum. [LB877]

SENATOR LATHROP: ...that won't fall under this now. And I don't know, it seems as long as the penalty is less, it may be something that's beneficial to the people that you represent, more of a clarification, with the opportunity for less of a sentence or the imposition of a less-serious crime. [LB877]

CHRIS EICKHOLT: I mean, it could be. It could be something we could certainly argue, because we can argue the state has to show that it actually is a working gun. And that's something that we don't have to...we can't argue now. The state does not have to prove that now to show it's a firearm. [LB877]

SENATOR LATHROP: Well, and don't you think, with this on the books, they will? [LB877]

CHRIS EICKHOLT: They could. However, the...we're still opposed to the bill itself just because of the whole list; that's explicitly not exhaustive. It says including but "not limited to," and then it mentions BB guns, paintball guns, toys. That's just a whole list of things that are really just going to add...that in all respects are different than the actual...what makes firearms bad, of course, is the damage they can cause and...in addition to the fear they cause people, but the damage and injury they cause. And that's not the same with a paintball gun; it's not the same with a toy. [LB877]

SENATOR LATHROP: Okay. Thanks. [LB877]

SENATOR ASHFORD: Thanks, Chris. Anyone else opposed to this bill? [LB877]

JOEL DONAHUE: (Exhibit 6) Good afternoon. My name is Joel Donahue, J-o-e-l D-o-n-a-h-u-e. I am the newly hired staff attorney for ACLU Nebraska and honored to make my debut before this committee. ACLU Nebraska opposes LB877, which expands the offense of use of a deadly weapon to commit a felony to include facsimile and nonfunctioning firearms. We oppose this expansion for two basic reasons. First, the expansion is unfair because it equates using weapons that are not deadly with those that are. Second, with our prison system severely overcrowded and our budget under pressure, this is not the time to put more people behind bars for longer times. Surely our conception of justice recognizes the difference between threatening someone with a toy gun and threatening someone with a real gun. Regardless of the victim's perception, which may well be that the item in question is a real gun, the fact remains that when a fake gun is used to commit a crime, the victim is not actually in any danger of being shot. A real threat and a perceived but nonexistent threat are simply not the same thing.

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Furthermore, anyone victimized by someone wielding a toy weapon will still have recourse to the criminal justice system, and anyone committing a robbery or other crime by means of a toy gun may be prosecuted as usual. If the use of a deadly weapon statute has a purpose, it must be to provide additional penalties to those who actually put others in additional danger by using an actual deadly weapon. Creating new crimes or expanding the reach of existing crimes with our corrections system severely overcrowded and our budget under pressure is poor policy. It costs just under \$33,000 a year to house an inmate at the Nebraska State Penitentiary. Under LB877, use of a toy gun to commit a felony is punishable by up to 20 years in prison. Does Nebraska really want to spend between \$33,000 and \$660,000 per inmate in order to keep our state safe from those who would use toy guns to commit crimes? Might it not be less expensive to require background checks for would-be toy gun owners in order to ensure their law-abiding nature? Isn't the reason that a background check for such items sounds silly because everyone knows that they aren't dangerous in the same way an actual firearm is dangerous? In addition to the annual cost per inmate involved, there is the fact that every year of prison that we add worsens the situation in an already overcrowded penal system. The Nebraska State Penitentiary is at 181 percent capacity, and the system as a whole is over 150 percent capacity. When the system is bursting at the seams, we should be looking for ways to reduce the inmate population rather than adding to it. Because LB877 fails the basic fairness test and will add to the burdens of an already overburdened system, we are asking you to indefinitely postpone LB877. Thank you. [LB877]

SENATOR ASHFORD: Joel, I just...we're not going to disregard our responsibility to look at difficult crimes as a means of reducing the prison population. I think what we're going to do is look at alternatives to...focus on, for the most part, alternatives to incarceration for that group of 50 percent of the incarcerated individuals who will be treated outside of the institution. I think that is the way to address that issue. So if there's...I mean, I don't know what the committee is going to do with this. But this is a serious matter when someone puts another person...and the other thing that bothers me about this kind of crime is that it's...the idea that all you need to do is get something that looks like a firearm and you can go rob somebody. Then you get the...then what you do is you get the reaction from, let's say, the store owner or the 7-Eleven owner or whatever; they have a real gun that, you know...and they use that real gun to defend themselves. I think Mr. Kleine talked about that. Then you've got the sequence of events that is...there's nothing good about it. And, you know, incarceration for that kind of...whatever we would determine the sentence should be is...can be a difficult effort. But in the end, incarceration rates are not the criteria for determining, in my view, for determining whether or not an offense should be consecutive, as Senator Seiler has suggested, or have it be separate offenses. That's not how you address the prison population issue. But, again, you happen to be sitting here. NE ACLU, I know, has an interest in prison overcrowding, and that's legitimate. But I think it's a separate kind of discussion, which we will be having in the next week. So, anyway...any comments or

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questions? I don't see any. Thanks, Joel. [LB877]

JOEL DONAHUE: Thank you. [LB877]

SENATOR ASHFORD: Anyone else opposed to this bill? Anybody neutral? Rod is coming back up again. Rod, you're in disguise. [LB877]

SENATOR LATHROP: After neutral testimony, can we have Don Kleine come back for a question? [LB877]

SENATOR ASHFORD: Sure. You've got a little disguise going. [LB877]

RODNEY MOELLER: It's that time of year, Senator. [LB877]

SENATOR ASHFORD: Okay. All right. [LB877]

RODNEY MOELLER: Yeah. Got to mix it up a little bit. [LB877]

SENATOR ASHFORD: Okay. [LB877]

RODNEY MOELLER: All right. Good afternoon. My name is Rodney Moeller, R-o-d-n-e-y M-o-e-l-l-e-r. I am representing the Nebraska Firearms Owners Association. We are taking a neutral position on this bill. However, there were some items that our members had concerns with, so I wanted to get those a matter of record. We're definitely not opposed to prosecuting criminals. We're all in favor of prosecuting violent offenders. As law-abiding citizens, violent crime is of a big concern to us. Our opposition is rooted in principle. We oppose calling an object something that it is not. We oppose calling a toy a weapon. A stick, a finger, a lighter, we're opposed to calling, you know, defining that as a weapon when it is what it is, and that's not a weapon. If...how can we call an object something it's not? How do we find that to be acceptable, and where would that end? Current law, Section 28-1205, generally increases the penalty if a person commits a crime with a deadly weapon. It makes that act a separate crime in addition to the main crime. 28-1206 generally increases the penalty of a felon or fugitive that is in possession of a deadly weapon. Can we not find some other charges to use if they can't recover the weapon or it isn't actually a deadly weapon and it's a facsimile weapon? If we look at Section 28-311.01, it defines terroristic threat as a threat of violence with the intent to terrorize another. Couldn't that apply? Another concern expressed by many of our members is how this section is commonly dismissed. It's used as a negotiating item in plea bargaining, and it seems like a lot of times these charges are just dismissed routinely. If they're dismissed all the time, do we have any stats to show how often this is attempted to be pursued? I mean, how many times do we prosecute on this versus dismiss it? How often are these charges actually pursued? We do want to see criminals prosecuted. We want to see the prosecutor's office have

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what they need in order to prosecute. But changing objects' definitions to be something they are not is a slippery slope; it is something every one of us should be very concerned about. And then there were a couple of other thoughts that I had, had that you've already touched on, Senator. And that has to do with, you know, reasonable belief, you know, in cases of self-defense. You know, I mean, if somebody is in fear of their life because a facsimile item was used, certainly we should be able to use that fear as part of the prosecution, regardless of what the object ended up being. And then we also had some people raise up an interesting question. So think of your typical criminal, and they think, oh, man, you know, I'm going to be treated one way if I have a weapon versus another way if I don't have a weapon but I pretend to. Well, now, all of a sudden, they're treated the same; what's the incentive to not actually go find themselves a real firearm? Now there...it's...isn't it more dangerous? [LB877]

SENATOR ASHFORD: I think that's what Senator Lathrop was getting at. [LB877]

RODNEY MOELLER: Yeah. [LB877]

SENATOR ASHFORD: Partially so. Okay, any questions of Rod? I don't see any. Thanks, Rod. Do we have any other neutral testifiers? Don, would you like to retake the stand here? [LB877]

DON KLEINE: Certainly. [LB877]

SENATOR LATHROP: Thanks for coming back. [LB877]

DON KLEINE: Sure. [LB877]

SENATOR LATHROP: You know, while the testifiers were testifying, I'm reading the definition of a facsimile firearm; and here's the thing that may be the question I'm looking for, and that is, shouldn't the bill say that the person at, you know, the victim, the guy at the grocery store or at the pharmacy or the liquor store, wherever it is, that that person believed it to be a real firearm and his belief was reasonable? Because right now, the way this is written, anybody who shows up...I could have a...the way it's written, I could show up with an orange squirt gun. And probably, under this definition, because it includes a toy, the victim perceives it to be a toy, and I don't think...if the perception of the person at whom it's aimed, or the victim, is that this is a nonfunctioning gun, that it is a toy or a BB gun that can't hurt them, then probably we don't want to make that a crime. I think what you're trying to get at is, if somebody produces a facsimile that the victim reasonably believed to be a real gun, then it should be this crime. [LB877]

DON KLEINE: Absolutely. [LB877]

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SENATOR LATHROP: Are you tracking me? [LB877]

DON KLEINE: Absolutely. [LB877]

SENATOR LATHROP: So what we're missing is... [LB877]

DON KLEINE: I don't think the... [LB877]

SENATOR LATHROP: What we're missing is... [LB877]

DON KLEINE: I don't think the person on the other side of it has to say, I'm going to take a chance, maybe it's not a real gun. [LB877]

SENATOR LATHROP: No, but don't you think the element should require that the person appreciates or at least believes that it is a real gun? [LB877]

DON KLEINE: Sure, and I think that's our purpose there, that they're putting that person in fear by whatever they're holding or making look like they have a firearm... [LB877]

SENATOR LATHROP: So the definition... [LB877]

DON KLEINE: ...no matter what it is. [LB877]

SENATOR LATHROP: The definition of a facsimile should require that the victim believe...have a reasonable belief that it is a real and functioning firearm. [LB877]

SENATOR SEILER: Steve, if I may interrupt, is that answered on page 3, line 14 and 15? [LB877]

DON KLEINE: And I thought it was. [LB877]

SENATOR SEILER: "...that is fashioned to be perceived as a real firearm..." [LB877]

DON KLEINE: Right. [LB877]

SENATOR SEILER: "...by a reasonable person"? [LB877]

SENATOR LATHROP: But here's the question. A guy shows up and he's pointing a BB gun at the clerk at the liquor store. And the guy could have two responses. One is he could go, "Jesus, they're pointing a real gun at me"; or he could go, "That's just a BB gun; you're not going to hurt me with that thing." The way the bill is drafted, he could be convicted in either circumstance. It seems to me that the bill should require a reasonable belief by the victim... [LB877]

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DON KLEINE: Well, I think that... [LB877]

SENATOR LATHROP: ...that somebody is pointing a real gun at him. [LB877]

DON KLEINE: I think that phrase--and I think we thought about that--when it says that it's "fashioned to be perceived as a real firearm by a reasonable person," it fits that process, because you're saying, if it's a reasonable person standard, that I thought, you know, I wasn't going to have the person shoot me; I thought that it was a real gun, but I don't know; I don't know guns. [LB877]

SENATOR LATHROP: And I'm not trying to argue with you... [LB877]

DON KLEINE: Right. [LB877]

SENATOR LATHROP: ...but it seems to me that if the clerk knows that somebody is pointing a paintball gun at him and he's not going to get taken out with one, or a BB gun, he knows...because it's just an objective standard doesn't require that the guy perceive it as a real gun; then the person could literally know it's a toy and still get convicted if a reasonable person might look at it and go, "The thing looked like a real gun to me." [LB877]

DON KLEINE: Well, I think that you're...the intent that you're looking at is the person who has the thing in his hands, not what the victim's thought process is. My purpose in holding this at you and pointing it at you is to make you think I've got a gun. And that's our purpose there, is looking at...again, when we talk about criminal law, the act and intent of the perpetrator, there's got to be an act and intent. And the statute follows that, okay, they did the...they're robbing the person, and they wanted the person to think they had some sort of a firearm, and it's reasonably perceived by a person that it is a firearm or could be a firearm. [LB877]

SENATOR LATHROP: So the firearm is defined in the statute as a deadly weapon, right? [LB877]

DON KLEINE: Yeah. Well, a... [LB877]

SENATOR LATHROP: More or less. I mean, I don't want to get into the weeds with you, but... [LB877]

DON KLEINE: No, that's okay. The jury instruction about a firearm: The law in Nebraska is a firearm shall mean an instrument used to propel shot, shell, or bullets by the action of gunpowder exploded within it. And a firearm is a deadly weapon. A deadly weapon is also defined as anything that is used or intended to be used in a way that could produce

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death or serious injury... [LB877]

SENATOR LATHROP: Okay. So the guy that rolls in... [LB877]

DON KLEINE: ...included within this definition of firearm. [LB877]

SENATOR LATHROP: ...the guy that rolls in with a BB gun, what are we trying to get at? If the clerk thinks he's having a BB gun pointed at him, and knows, this guy isn't going to do anything but cause a welt, he's never going to kill me with it; and then you have another clerk at the second liquor store that night that looked at it and thought it was a real gun, it seems to me what we're trying to do is to account for the circumstance where the clerk thought he was looking at a real gun and might get killed. If the guy doesn't think he's ever going to get killed with a gun...is that what we're trying to do? [LB877]

DON KLEINE: You know, right now, if, say, the elements of the crime are...we couldn't prosecute somebody if somebody said, this is a--even the clerk said--this is a toy gun. They wouldn't be prosecuted for use of a deadly weapon. [LB877]

SENATOR LATHROP: Right. I get it. [LB877]

DON KLEINE: So...so... [LB877]

SENATOR LATHROP: And you want to get the people that are acting like they've got one... [LB877]

DON KLEINE: Yes. [LB877]

SENATOR LATHROP: ...scaring the daylights out of people... [LB877]

DON KLEINE: Absolutely. [LB877]

SENATOR LATHROP: But when they roll in, and the guys knows... [LB877]

DON KLEINE: Or causing the situation that Senator Ashford said, well, the person could pull a gun out and shoot them, or...and have somebody else in the store get shot, or create havoc in that situation. [LB877]

SENATOR LATHROP: But don't you think it requires some fear on the part of the person who's the victim? [LB877]

DON KLEINE: Well, certainly. [LB877]

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SENATOR LATHROP: And if he knows it's a toy, should that be an offense? Or should it only be an offense if it looks like a real gun and the guy thought it was a real gun? [LB877]

DON KLEINE: Well, I guess, when I'm thinking about this, I'm not thinking--if I'm on the other side of that, whatever it is--"Well, is it a toy or is it for real? And should I take a chance that it's not for real, or am I still scared anyway because this person says, give me your money, and is pointing something at me?" Whether, you know, even the... [LB877]

SENATOR LATHROP: That sort of assumes that the guy thinks it's a real gun and might... [LB877]

DON KLEINE: Even the situation, though, where it's in your pocket like this, you don't see it, but that person wants you to believe that they have a firearm. And they might just have their finger in there, or a screwdriver... [LB877]

SENATOR LATHROP: Right. [LB877]

DON KLEINE: ...or a pen. [LB877]

SENATOR LATHROP: Right. But my point, going back to it...and...it's the elements of this crime. And so far, the elements just require that I come in with a toy gun. [LB877]

DON KLEINE: The elements are that you... [LB877]

SENATOR LATHROP: Not even that... [LB877]

DON KLEINE: ...you intended something... [LB877]

SENATOR LATHROP: The jury says to themselves, under what would be the jury instructions here, is it reasonable for someone--we don't even have to introduce evidence on what the clerk thought--is it reasonable for someone to believe that this is a real gun? It seems to me that it should be about the reasonable belief of the victim. [LB877]

DON KLEINE: Well... [LB877]

SENATOR LATHROP: Did the victim have a reasonable belief that he was having a real gun pointed at him? [LB877]

DON KLEINE: Well, I don't know how you would prove it without having the victim testify. You said it doesn't matter what the victim says. Certainly it does. They have to

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testify: I saw this person pointing something at me while they told me to give them the money, and it... [LB877]

SENATOR LATHROP: Okay. [LB877]

DON KLEINE: ...looked like a gun to me, but I don't know if it was a real gun, or I don't know if it was a toy gun... [LB877]

SENATOR LATHROP: Not... [LB877]

DON KLEINE: ...or a BB gun. [LB877]

SENATOR LATHROP: Then he ought to be convicted. [LB877]

DON KLEINE: Yeah. [LB877]

SENATOR LATHROP: My point is, what if he...what if he... [LB877]

DON KLEINE: What if they say... [LB877]

SENATOR LATHROP: What if the testimony is: Yeah, he pointed this thing at me; I could tell that the end of it was welded shut; I saw that; I wasn't afraid the guy was going to shoot me, but he was pointing it at me. Is that the crime we're trying to get to? [LB877]

DON KLEINE: No. I think it's the situation, as you said, where somebody points something at this poor person that's on the other side of it, and they think it's a firearm; and it doesn't matter whether it's a real gun or not because we don't have the gun. [LB877]

SENATOR LATHROP: Exactly. So doesn't...isn't the distinction what the clerk thought and whether that's a reasonable belief? [LB877]

DON KLEINE: And that's what it says here; I think that it says that it's perceived. And the perception, obviously, is in the mind of the person who's getting the gun pointed at him, as a real firearm, by a reasonable person, or that...the only way you're going to find that the reasonable person there is by asking the clerk: What did you think? Well, I saw this person and it looked like a real gun to me, but I don't know guns. And a reasonable... [LB877]

SENATOR ASHFORD: I think there...aren't there two elements here? Because you have to show...I mean, I think, to your point, is that if someone has a BB gun or whatever it is and walks in there...when you say "fashioned to be perceived," you are, to

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some extent, getting at the actions or the thought process of the perpetrator... [LB877]

DON KLEINE: Right. [LB877]

SENATOR ASHFORD: ...by saying, you don't have a real gun, for whatever reason...or a real gun or a...or let's say you have a gun with a...some kind of malfunction in it. But you're still fashioning it in a manner so that someone would perceive it's a real gun. Why else would you... [LB877]

DON KLEINE: Right. [LB877]

SENATOR ASHFORD: ...walk in to rob someplace with something that isn't perceived to be a real gun, unless you're just playing around, to Steve's point. I mean, maybe what Steve...if it's just joking around or if you're just...you're... [LB877]

DON KLEINE: That's different. [LB877]

SENATOR ASHFORD: ...something that's obviously not fashioned to be a weapon...and I'm not sure what that would be exactly, but maybe something that looks like a, you know, a squirt gun. That probably wouldn't be, I mean, you probably wouldn't prosecute that. [LB877]

DON KLEINE: No. I think that's what you're getting at. [LB877]

SENATOR ASHFORD: Is that what you... [LB877]

DON KLEINE: Maybe I misunderstood. [LB877]

SENATOR ASHFORD: ...or maybe not. [LB877]

DON KLEINE: But to me, it's...the situation... [LB877]

SENATOR LATHROP: I think that the "facsimile firearm" means...it probably should mean, or I would change the definition to: Facsimile firearm means an instrument which was reasonably perceived by the victim to be a real firearm, which includes...I don't even know if you need the "which includes." But it gets away from the guy who shows up and the clerk goes: It's a BB gun; I'm not afraid of you. Versus... [LB877]

DON KLEINE: Well, then it's not robbery anymore. [LB877]

SENATOR LATHROP: Pardon me? [LB877]

DON KLEINE: Then it's not robbery anymore. [LB877]

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SENATOR ASHFORD: It's a joke then. It's a... [LB877]

DON KLEINE: It's a joke. It's...you said, I'm not afraid of you. [LB877]

SENATOR LATHROP: But... [LB877]

DON KLEINE: That's different. [LB877]

SENATOR LATHROP: But that's... [LB877]

DON KLEINE: You're changing the whole situation there. [LB877]

SENATOR LATHROP: I'm trying to make a distinction between the ones where the guy is afraid because he thinks somebody is pointing a real gun at him and the guy who rolls in with, you know, the starter gun; it's welded at the end, right? There's no hole at the end? [LB877]

DON KLEINE: Well, it can be. [LB877]

SENATOR LATHROP: Okay. Or it could be a BB gun. The guy goes: That's a BB gun. He's not in fear. But this doesn't require that he be in fear. And it doesn't...that...the "reasonably perceived" isn't this victim, it is anybody. [LB877]

DON KLEINE: Well, it's not a robbery either, then, if he's not in fear. So that takes care of that too. So, I mean, if he...to have a robbery, you have to place somebody in fear to take property from them, by use of force or threat of force. If you're saying the person said, well, gee, this is a joke, this is not a real gun, then it's not a robbery, and it's not a use either. [LB877]

SENATOR LATHROP: Not a joke. But if the guy knows it's not a real...or doesn't believe it's a real gun... [LB877]

SENATOR SEILER: I think you... [LB877]

SENATOR LATHROP: Well, we can...we can maybe talk about it. [LB877]

SENATOR ASHFORD: It's a... [LB877]

DON KLEINE: I think that the definition could be altered or tweaked... [LB877]

SENATOR SEILER: Right. [LB877]

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SENATOR ASHFORD: Right. [LB877]

DON KLEINE: ...I think, to... [LB877]

SENATOR LATHROP: It doesn't include an element that it's... [LB877]

SENATOR ASHFORD: Right. [LB877]

SENATOR LATHROP: ...the victim that thinks it's real. And that's missing from this, I believe. [LB877]

SENATOR ASHFORD: But it's both, isn't it? I mean, it's...you've got to...in order for you to prosecute, there's got to be...someone has to do this: they have to fashion this gun, they have to walk in there with it. [LB877]

DON KLEINE: Right. [LB877]

SENATOR SEILER: I think it solves both of your problems by adding, after "perceived," in that first sentence, "by the victim": "reasonably perceived by the victim." And that solves your problem that he knows it doesn't. And then it goes on that that's a perception "by a reasonable person,"... [LB877]

DON KLEINE: And I think... [LB877]

SENATOR SEILER: ...for your jury instruction. [LB877]

DON KLEINE: ...we would be accepting of something like that. I think it's important, though. I think this bill is important. I think it...and I think, as you said... [LB877]

SENATOR LATHROP: I'm not trying to kill the bill. [LB877]

DON KLEINE: No, I know. [LB877]

SENATOR LATHROP: I'm just trying to make sure the elements are all there. [LB877]

DON KLEINE: I think it is beneficial even from the other side's perspective, because it does...it lowers the penalty when we're talking about somebody using a facsimile firearm. [LB877]

SENATOR LATHROP: Let me ask you another question. [LB877]

DON KLEINE: Sure. [LB877]

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SENATOR LATHROP: If this bill passes and somebody has to fashion the jury instruction, do you think the jury instruction would include the language that's in the bill that says, "includes, but is not limited to, a replica gun, an imitation gun, a BB gun, a pellet gun, a paintball gun, a toy gun, a lighter gun"? Do you think that works its way into the jury instructions if this is in the law? [LB877]

DON KLEINE: I think it depends on what the evidence is. And I, you know, a lot of times usually the court tailors the jury instruction to what the evidence is or what the testimony was. And I think changing the language, that would fit the jury instruction also, as far as...and I think that would...might satisfy the question you had, is if we just changed those examples and just put down... [LB877]

SENATOR ASHFORD: Right. [LB877]

DON KLEINE: ...what the victim perceived. [LB877]

SENATOR LATHROP: Can we eliminate the examples? [LB877]

SENATOR ASHFORD: Yeah, the examples...aren't the... [LB877]

DON KLEINE: Yeah, we could eliminate the examples. [LB877]

SENATOR ASHFORD: ...the examples are a bit...yeah, I think you could...you're getting to the same place, aren't you? [LB877]

DON KLEINE: Right. Right. So... [LB877]

SENATOR LATHROP: So it would be...reasonably be perceived by the victim to be a real firearm, period. [LB877]

DON KLEINE: Right. [LB877]

SENATOR LATHROP: Okay. [LB877]

DON KLEINE: Okay? [LB877]

SENATOR LATHROP: Yep. I appreciate you coming back and... [LB877]

DON KLEINE: No, that's no problem. [LB877]

SENATOR LATHROP: ...answering my questions. [LB877]

DON KLEINE: Sure. [LB877]

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SENATOR LATHROP: I get why you want it and why you need it, and I agree with it. I just want to make sure that some guy rolling around with a... [LB877]

DON KLEINE: Sure. [LB877]

SENATOR LATHROP: ...a BB gun everybody knows is a BB gun isn't... [LB877]

DON KLEINE: And that's why this process is so important, to make sure we mold it in the right way and... [LB877]

SENATOR LATHROP: Right. [LB877]

DON KLEINE: ...get the words right. So I appreciate that. [LB877]

SENATOR LATHROP: Okay. [LB877]

DON KLEINE: All right. [LB877]

SENATOR LATHROP: Thanks, Don. [LB877]

DON KLEINE: Sure. [LB877]

SENATOR ASHFORD: Okay. Senator Harr. [LB877]

SENATOR HARR: Thank you. Thank you, members of the Judiciary Committee. I kind of feel like Frank Solich, following a legend, right now. [LB877]

SENATOR ASHFORD: Senator Lathrop or...? [LB877]

SENATOR HARR: What's that? [LB877]

SENATOR ASHFORD: Oh, you meant... [LB877]

SENATOR HARR: Mr. Kleine. [LB877]

SENATOR ASHFORD: Oh, Mr. Kleine. Oh, I thought... [LB877]

SENATOR SEILER: There's no reason to suck up to previous employers. (Laughter) [LB877]

SENATOR LATHROP: Yeah, you don't work for him anymore. [LB877]

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SENATOR ASHFORD: Well, then you've got... [LB877]

SENATOR HARR: I used to. I used to. [LB877]

SENATOR ASHFORD: Have you been engaging in activities in Douglas County that you don't want... [LB877]

SENATOR HARR: Yeah. This has been an interesting conversation. We want to create a bill so we don't put the victim in the situation where they sit there and contemplate: Is that a real gun? Is it not a real gun? Is my belief that it's a real gun reasonable? The person...the criminal in this situation comes in with an intent; they show an object. Their intent is for you to think it's real; it's to inflict fear into you, period. That's the intent. We don't like that. Public policy says, we don't like that. That's why it's a separate crime to use that gun. We've shown that in the past with our other bills. That's what this bill does. This bill...when you go in and you're using the color of that gun to intimidate the other person, and now I have to sit there and say, well, is that a BB gun; is it a real gun; is it a starter gun? We don't want to put our victims in that situation; we don't want to re-victimize the victim. We take into account that it may not be a real gun by saying it's a Class III instead of a Class II felony. We take it into account. And if someone comes in with an orange squirt gun, first of all I don't know if it creates fear. And even if it does create fear, there is discretion by that judge to say, hmm, maybe it wasn't...and they can adjust the sentence. Now, the fact that we look at sentencing, that we have prison overcrowding, I think Chairman Ashford was exactly right. If we don't prosecute our most violent crimes, why are we here? You know, we want to protect those who can't protect themselves. That's the number-one job of a prosecutor in this society, is to protect those who can't protect themselves. Someone gives you a gun, and we say, eh, sorry, our prisons are overflowing; are we doing our job as legislators? I don't think so. [LB877]

SENATOR ASHFORD: And it's also the job of...I mean, prosecutors I know are also interested in rehabilitation. [LB877]

SENATOR HARR: Exactly. [LB877]

SENATOR ASHFORD: And if you have... [LB877]

SENATOR HARR: Where it's proper. [LB877]

SENATOR ASHFORD: ...if you have a...I mean, they prosecute somebody to get them off the street because they've committed a dangerous act. I mean, the intent or the hope is... [LB877]

SENATOR HARR: Exactly. [LB877]

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SENATOR ASHFORD: ...as part of this process they're going to, number one, not be a danger, but, number two, they're going to, hopefully, at some point be productive again. So... [LB877]

SENATOR HARR: Exactly. And, finally, this gives...the problem we have...we have a great problem with gun violence, especially in Omaha. And it gives a bad name and besmirches the honor of those who use guns properly and legally. And I think those who use guns properly and legally abhor the fact that people use it for criminal intent. And so they don't want the color of guns being used and besmirching the honor of the guns. So this helps those individuals. We do not want criminals to go in using a gun, whether it's real or not, to inflict fear into victims. Thank you. [LB877]

SENATOR ASHFORD: Okay. [LB877]

SENATOR HARR: I'd entertain any questions. [LB877]

SENATOR ASHFORD: Any questions of... [LB877]

SENATOR HARR: Remember, Solich didn't last very long, so... [LB877]

SENATOR ASHFORD: It was a fair...it was a fair comment, but...yes, Senator Seiler. [LB877]

SENATOR SEILER: Senator, do you have any trouble adding the words "by the victim" after "perceived"? [LB877]

SENATOR HARR: I'd have to look at it a little bit more; I mean, that's why we write and look at it in writing, most of the time, in law. My fear, again, is, a defense attorney comes up and asks a victim: Did you think it was a real gun? And it was the description given earlier: I don't know; I didn't care; I didn't want to get shot. [LB877]

SENATOR SEILER: Hey, that's a defense. [LB877]

SENATOR ASHFORD: Well, that's a different answer, though. That's a different answer, if he says that. [LB877]

SENATOR SEILER: Yeah. [LB877]

SENATOR HARR: But is it reasonable to believe, "I don't know"? If they say, "I don't know," is there a belief that it is? The person says, "I don't know." [LB877]

SENATOR SEILER: How are you going to prove your case if the victim doesn't say, "I

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really believed that was a gun"? [LB877]

SENATOR HARR: Well, that's what...by changing that reasonableness standard, that's the problem you run into, is the person sits there and says, "I didn't care if it was a gun. I didn't want to get shot. I wasn't going to sit there and wait for him to shoot me, and say, 'Son of a gun, it was real.'" We don't want that. Remember, the problem is, that criminal is going in, pointing something at you and with the intent for you to believe it's a gun... [LB877]

SENATOR SEILER: And if you don't...and if you don't... [LB877]

SENATOR HARR: ...for you to do what they want you to do. [LB877]

SENATOR SEILER: And if you don't, he hasn't committed the crime. [LB877]

SENATOR HARR: What's that? [LB877]

SENATOR SEILER: If you don't, as a victim, believe it's a gun, he hasn't committed the crime. [LB877]

SENATOR HARR: No. That's not right, because there's... [LB877]

SENATOR ASHFORD: No, that's what Don said. [LB877]

SENATOR HARR: What? No. [LB877]

SENATOR ASHFORD: You've got to have both...you've got to have some reasonable suspicion. [LB877]

SENATOR HARR: Yeah. Yeah, you have to...remember, I'm going in with the fear that it's a gun. And so you are inflicting fear. If you point a gun at me, or a toy gun, and I believe it's real, you are inflicting fear in me. Whether it's real or not, it doesn't matter. Whether my belief is reasonable or not, it doesn't matter. [LB877]

SENATOR SEILER: Yes, it does. [LB877]

SENATOR HARR: You're going in there with the hope, as a criminal, that I will think... [LB877]

SENATOR SEILER: It matters. [LB877]

SENATOR HARR: ...as a victim, it's real. That's why you're doing it. You wouldn't go in there with a piece of paper and say, "Hey, sign this and give me all your money in the

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cash register." No, you're going in there with the hope and the intent that...that you think that I think that gun is real. Whether it's reasonable or not that you do it...why is the burden on the victim to say it's reasonable that person used a gun or not... [LB877]

SENATOR SEILER: Because the burden... [LB877]

SENATOR HARR: ...and not on the... [LB877]

SENATOR ASHFORD: The burden is always on the state. [LB877]

SENATOR SEILER: The burden of proof doesn't go that way. [LB877]

SENATOR HARR: What's that? [LB877]

SENATOR ASHFORD: The burden is always on the state. [LB877]

SENATOR SEILER: Yeah. You've just switched the burden of proof. [LB877]

SENATOR ASHFORD: It's not...the burden is not on the... [LB877]

SENATOR HARR: No. Well... [LB877]

SENATOR ASHFORD: ...on the defendant to prove... [LB877]

SENATOR LATHROP: Frank Solich. [LB877]

SENATOR HARR: No, no, no, no, no. No, you're...no, it's not switching the burden. It's not switching the burden. But what you're saying is, who has the point of being reasonable? So the issue is, did that victim...was it reasonable for the victim to believe that was a gun? If you're in fear...remember, they're going in with the purpose of making that victim think it's a gun. That's why they're doing it. They're not going in there to say, hey, I want to squirt you if you don't give me the water (sic). They're going in there with the intent for that victim to think it's a gun. That's why they're doing it. Now, I'm in fear; I'm wetting my pants. And now I have to look at it and say... [LB877]

SENATOR ASHFORD: And that's why they have (inaudible) the bill. That's why the bill is there. [LB877]

SENATOR HARR: I mean, that's why...yeah, so... [LB877]

SENATOR SEILER: And that's by the "reasonable perceived" by the victim. [LB877]

SENATOR HARR: So what would you say...let me ask--and I don't know the

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answer--how you perceive it. So if--and I'm sorry if I'm asking questions--but if a victim got up there and said, "I don't know if it was a gun or not; I was just scared," would they be able to prosecute (inaudible). [LB877]

SENATOR SEILER: Well, Don and I are probably the only two in the room that's old enough to remember the...when we had the substitute drugs, where they'd grind up alfalfa and sell it as marijuana. And we used to try those cases. [LB877]

SENATOR HARR: Okay. [LB877]

SENATOR SEILER: And the same thing here. It's what they believed the guy was buying... [LB877]

SENATOR HARR: Yeah. [LB877]

SENATOR SEILER: ...that was the key in the jury instruction. [LB877]

SENATOR HARR: So... [LB877]

SENATOR SEILER: Am I remembering that right? Okay. [LB877]

SENATOR HARR: Gangs still exist today. But the question is, I mean, so I don't know, would you, under that scenario, if the victim got up and said, "I don't know if it was real or not"... [LB877]

SENATOR SEILER: You just lost your Count 2. As a judge, I'd rule that you don't have the evidence to prove up on your case. [LB877]

SENATOR HARR: Even though...because that's what we're trying to get at, is... [LB877]

SENATOR SEILER: No. [LB877]

SENATOR HARR: We don't want to make that... [LB877]

SENATOR SEILER: No, you're at where you want to be. You want to be: that victim is scared, and he perceives it to be a real gun. [LB877]

SENATOR HARR: Okay. [LB877]

SENATOR LATHROP: I think we've got it. [LB877]

SENATOR ASHFORD: We'll sort it out. [LB877]

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SENATOR HARR: Yep. [LB877]

SENATOR ASHFORD: We'll sort it out. [LB877]

SENATOR HARR: Thank you. [LB877]

SENATOR LATHROP: Thanks. [LB877]

SENATOR ASHFORD: Thank you. Thanks, everyone. All right, now we have the next bill. Is it...? LB857. Senator Bloomfield is here. Dakota County. Almost. [LB877]

SENATOR BLOOMFIELD: Actually, Wayne County is where I reside. [LB857]

SENATOR ASHFORD: You're actually in Wayne County. [LB770]

SENATOR BLOOMFIELD: Yes, I am. [LB770]

SENATOR ASHFORD: But you have Dakota County. [LB770]

SENATOR BLOOMFIELD: I represent Dakota County. [LB770]

SENATOR ASHFORD: Yeah. Well, you don't have them, you represent them. [LB770]

SENATOR BLOOMFIELD: (Laugh) Good afternoon, Chairman Ashford, members of the Judiciary Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d. I represent the 17th Legislative District. I'm here to introduce LB857 to the committee for your consideration. This bill was brought to me by the Nebraska Firearms Owners Association, but don't let that make you nervous. We're adding one sentence to the statute regarding concealed handgun permits. [LB857]

SENATOR ASHFORD: It doesn't make me nervous at all. Go ahead. [LB857]

SENATOR BLOOMFIELD: Good. I'm glad to hear that. Currently under law, if an applicant is a member of the United States Armed Forces, such applicant shall be considered a resident of this state for the purposes of getting a concealed permit. I kind of lost myself here, but I'll find it. [LB857]

SENATOR ASHFORD: No, you're fine. You've got it. You've got it, Dave. I mean, you're basically saying that... [LB857]

SENATOR BLOOMFIELD: Yeah. [LB857]

SENATOR ASHFORD: The... [LB857]

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SENATOR BLOOMFIELD: And basically what we want to do is grant that same right to the serviceman or -woman's spouse. [LB857]

SENATOR ASHFORD: Who is deployed here. [LB857]

SENATOR BLOOMFIELD: Yeah. So if a male or female soldier is here, after six months he can apply or she can apply for a concealed permit under Nebraska rules, and we're simply saying that his spouse or her spouse should be able to do the same thing. [LB857]

SENATOR ASHFORD: Okay. [LB857]

SENATOR BLOOMFIELD: It's pretty simple, even if I can't read it correctly. [LB857]

SENATOR ASHFORD: Okay. I think you did fine. Any questions of Senator Bloomfield? This applies to the spouse of the...of military person. [LB857]

SENATOR BLOOMFIELD: Right. [LB857]

SENATOR ASHFORD: Okay. [LB857]

SENATOR BLOOMFIELD: The military individual himself is already covered under Nebraska law. [LB857]

SENATOR ASHFORD: Covered under existing law, right. [LB857]

SENATOR BLOOMFIELD: Yeah. [LB857]

SENATOR ASHFORD: Okay. I don't see any questions. Thanks, Dave. [LB857]

SENATOR BLOOMFIELD: Yep. Thank you. [LB857]

SENATOR ASHFORD: Proponents. [LB857]

SENATOR LATHROP: What? [LB857]

SENATOR MCGILL: Go ahead. [LB857]

BRYAN VAN DEUN: (Exhibit 7) Mr. Chairman and members of the Judiciary Committee, I am Bryan J. Van Deun, B-r-y-a-n V-a-n D-e-u-n, of South 28th Street in Lincoln. And I'm a registered, volunteer, unpaid lobbyist for the Nebraska Firearm Owners Association. I'm speaking in support of LB857 as submitted by Mr. Bloomfield of

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District 17. This bill allows the spouse of a member of the United States military stationed in Nebraska the same ability to get a concealed carry permit even though they are not otherwise citizens of Nebraska. Most members of the military and their spouses maintain their legal and voting residence and pay taxes in the state from which they entered the service and do not change each time they get restationed. This act extends the same protections to the spouse of a military member as there are for the military member in concert with federal law, that federal law being Servicemembers Civil Relief Act of 2007 and in 2009 Congress enacted the Military Spouses Residency Relief Act. We of the NFOA fully support this bill. Thank you for your consideration. [LB857]

SENATOR MCGILL: Thank you very much. [LB857]

BRYAN VAN DEUN: Thank you. [LB857]

SENATOR MCGILL: Any questions? I don't see any. [LB857]

BRYAN VAN DEUN: Yes, sir. [LB857]

SENATOR LATHROP: I do have a question. And I know I cosigned this bill but I do have a question anyway. This would allow someone...the bill...the law as it exists today is that a person who is in the military doesn't have to go through some concealed carry process. [LB857]

BRYAN VAN DEUN: No. They have to go through the concealed carry process, but they don't have to be a citizen of the state of Nebraska. They can be a resident of Virginia or Utah. [LB857]

SENATOR LATHROP: Okay. So they still...somebody is still filtering these people to pull out the felons and the... [LB857]

BRYAN VAN DEUN: Oh, yes, absolutely. [LB857]

SENATOR LATHROP: Okay. [LB857]

BRYAN VAN DEUN: They still have to go through the test and the shooting and so forth. [LB857]

SENATOR LATHROP: Okay. Okay. That's my question. Thank you. [LB857]

BRYAN VAN DEUN: Um-hum. [LB857]

SENATOR MCGILL: All right. I don't see any other questions. [LB857]

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BRYAN VAN DEUN: Thank you. [LB857]

SENATOR MCGILL: We'll take anyone else here to testify in favor of the bill. Okay, anyone here opposed? Anyone here to testify in a neutral capacity? Well, Senator Bloomfield, do you want to close on your...? Oh, Senator Bloomfield waives. Steve, do you want to...I...my bills are next. [LB857]

SENATOR LATHROP: Yes. [LB934]

SENATOR MCGILL: Thank you. Actually, Rachel probably didn't expect that to go so quickly, so my staff are walking down with the book right now, I'm sure. Give me a second. Just give me a moment. Waiting for Rachel to bring the book. She's in the hallway. [LB934]

SENATOR LATHROP: I'd go to the next bill, but that's yours too. [LB934]

SENATOR MCGILL: But that's me, too, I know, I know. [LB934]

SENATOR LATHROP: So we'll wait, we'll wait. [LB934]

SENATOR MCGILL: That bill went much quicker than (inaudible). [LB934]

SENATOR SEILER: I think you're right on by that change, and you said that change is... [LB934]

SENATOR LATHROP: You know what, it should say, "was reasonably perceived by the victim." [LB934]

SENATOR SEILER: Right. [LB934]

SENATOR LATHROP: And that takes care of it. [LB934]

SENATOR SEILER: I think it does too. [LB934]

SENATOR MCGILL: Sorry about that. Ready for me? [LB934]

SENATOR LATHROP: Yes, we are. [LB934]

SENATOR MCGILL: All right. [LB857]

SENATOR LATHROP: Senator McGill to open on LB934. [LB934]

SENATOR MCGILL: Thank you. For the record, I'm state Senator Amanda McGill,

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M-c-G-i-l-l; and I represent northeast Lincoln here in the Legislature. As this committee knows all too well, human trafficking is an appalling crime that happens in Nebraska communities under the radar. Awareness and education are critical to stopping these offenses and helping victims. When I began this undertaking three years ago, I did not anticipate the sheer number of Nebraskans who would reach out to my office about this issue. I sent updates to a list of about 200 people that have contacted my office and asked to be involved in my community group. I feel an incredible responsibility to work hard for these volunteers and advocates, more importantly, to speak for those who are silenced, for the victims that I've also gotten a chance to talk to. I've heard the stories, and I've met with the volunteers that are helping these victims on a daily basis, as well as some of the nonprofits locally that have taken on this issue. The grass-roots effort to stop human trafficking is diverse and statewide. I get e-mails constantly from people wanting to know how to help victims and from others offering their programs up for replication in our state. My office has, frankly, been overwhelmed, as have many of our state's nonprofits. My office has done the best that we can to coordinate on this issue, and other nonprofits have also tried. But regardless of our passion and dedication, we are still not moving along with improving victim services as quickly as I believe we need to be. There is a letter of support from the WCA that you have on your desks talking about the 30 victims that they've been helping just in the last six months. And they're a nonprofit, for instance, who, you know, they don't have a program specifically for human trafficking victims. When they find a victim, they're scurrying to find resources, calling their donors, trying to get them a place that they can set these victims up at a hotel room and in an apartment. Even they, one of the most organized nonprofits in our state dealing with women who have faced violence issues, even they struggle to provide a full array of what our victims need. And that's why I'm here today to introduce LB934, establishing the Coordinator of Human Trafficking Prevention and Rehabilitation under the Crime Commission. You know, I've seen that we need this one person, one leader who is able to help an organization like the WCA also coordinate...or find the absolute best programming possible as we look at what other states are doing, and also partnering with, maybe, areas in other parts of the state, for victims. Some victims need to stay in Douglas County; some could be going out and staying in a shelter in Kearney or Grand Island or North Platte. The Task Force on Human Trafficking created in 2012 has fulfilled its specific required duties, but it's become clear that in order to move forward in a meaningful way, we need to have this dedicated statewide coordinator, a single person whose job it is to lead efforts. The task force members recognize this need and recommended it in their most recent report. I did the best I could to draft the duties of the coordinator and the task force...and redraft the duties of the task force in the best way I could leading into bill introduction; but I'm ready to work with the committee, task force members, and other interested parties to lay out these duties in the best possible way. For instance, I know there's some interest in the task force to actually have this coordinator chair the task force and be in charge of it. At one point in time, I thought about eliminating the task force. And so I decided that that was not something that we needed to do. But there is a sunset provision in the bill, for the task force, in July of

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2015. But I'm open to discussion on whether or not to keep that sunset in here or not and how we can best make sure the task force is as beneficial to our state, moving forward. With that, I know there are a couple of people here in the audience who are looking forward to testifying on this issue. And I would be happy to take any questions. [LB934]

SENATOR LATHROP: Senator Seiler. [LB934]

SENATOR SEILER: Senator, I just have one question. [LB934]

SENATOR MCGILL: Um-hum. [LB934]

SENATOR SEILER: How do you propose to finance this director? [LB934]

SENATOR MCGILL: This would be a General Fund... [LB934]

SENATOR SEILER: I don't see a note on it. [LB934]

SENATOR MCGILL: The...the fiscal note is from the Crime Commission and...actually, I do want to address this real quick. The Crime Commission, when they put in their fiscal note, not only included in both years the position itself, but they actually also included \$25,000 for a study on labor trafficking that wasn't in my bill. I think it's something that's worthy of being discussed. We've appropriated money in the past to study sex trafficking itself, and that's taken longer than I had hoped to get that research done. And so it's arguably a good cause. Whether or not we want that to be in the final bill, I'm not so sure; we can certainly have those discussions. But I have the...let's see, I have the fiscal note here. Just General Fund expenditures. [LB934]

SENATOR SEILER: Senator, I have it now. [LB934]

SENATOR MCGILL: Oh, do you? Okay. [LB934]

SENATOR SEILER: They just... [LB934]

SENATOR MCGILL: Okay. [LB934]

SENATOR SEILER: They just brought it to me. So that's fine. [LB934]

SENATOR MCGILL: All right. [LB934]

SENATOR LATHROP: Okay. I see no other questions. Thank you. [LB934]

SENATOR MCGILL: All right. [LB934]

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SENATOR LATHROP: Those who are here to testify in favor may come forward. We'll take the first proponent to Senator McGill's LB934. [LB934]

AL RISKOWSKI: (Exhibit 8) Senators, Al Riskowski, Nebraska Family Alliance. Riskowski is R-i-s-k-o-w-s-k-i. I serve on the Governor's Task Force on Human Trafficking, and I think it's imperative that we understand the extent of the problem that we're looking at. That's one of the difficulties we had here in the state of Nebraska: how big is this problem? And that's what we looked at with this task force. Let me just share with you what's happening around us, because here in the state of Nebraska we have not had the opportunity yet to do a formal research project to find out the extent of the problem we have here in the state of Nebraska. And in just a moment I'll just review a little bit of what we did find as we interviewed numerous different organizations and groups. Colorado, just across the border, in 2012, Just Children...or, excuse me, in 2011, Just Children rescued 49 out of the sex trade, in 2011. In 2012, they rescued 60 children out of the sex trade just in the state of Colorado. To me, that's staggering. In the state of Ohio, after they did a study, Just Children, in human trafficking or in the sex trade, they estimate 1,078 children in the sex trade in the state of Ohio alone. And as we began interviewing different individuals, as we identified here in the state of Nebraska who might come in contact with a human trafficking victim or a child that is being held against their will in the sex trade specifically...and, by definition, here in the state of Nebraska, if you're a minor in the sex trade, you are a human trafficking victim. You can be a Nebraska citizen as well; there does not have to be movement required to be a human trafficking victim. And as we interviewed numerous agencies, we did not find one agency who didn't have stories about coming in contact with individuals in the sex trade and human trafficking and minors. And after interviewing individuals that were actually involved in the sex trade, we estimated that there was a minimum of 50 to 100 children being held here, at least in Lincoln and Omaha, in the sex trade, as well as over 1,200 adult women in just Lincoln/Omaha. The extent of the problem is large, and the difficulty with the task force is the direction to go at this point, how to attack this very large problem. We finished some of the initial directives that we were given here in the state of Nebraska, but I think we're looking for direction. And an individual of this type could help provide us direction, in regard to giving us guidance. I would encourage that the task force stay intact. In looking around...states around us, I find they all have task forces. Matter of fact, California, which has a gigantic problem, has ten task forces that are in place there, as well as do our neighboring states. So I thank you for caring a little bit about the problem today; I know others will address that. I'd be happy to answer any questions. [LB934]

SENATOR ASHFORD: Thanks, Al. Thanks for all your help on this issue. [LB934]

AL RISKOWSKI: Thank you. [LB934]

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SENATOR ASHFORD: Okay. Proponents. [LB934]

SRIYANI TIDBALL: My name is Sriyani Tidball. Thank you, Senator Ashford and everyone else, for giving me an opportunity to be here. I work at the University of Nebraska-Lincoln. I'm on the...one of the principal investigators working on a grant from Microsoft on the demand side of human trafficking, right now. I also teach a class, and have been for almost five years, on the topic, very familiar with it. And the reason I love this bill is finally to see the state of Nebraska saying, okay, we'll do something in the government, to put someone here that could be a coordinator. Because there's a lot of things going on, and everyone is doing their own thing, I think it would be wonderful to see someone here representing all these other people. And I think it's about time that we hear that you are interested in protecting our children. [LB934]

SENATOR ASHFORD: Well, Senator McGill has been interested in protecting our children for a lot longer than just now. But thank you for your comment on that. [LB934]

SRIYANI TIDBALL: Well, you know... [LB934]

SENATOR ASHFORD: I mean... [LB934]

SRIYANI TIDBALL: ...we're so concerned about the lack of, you know, something more legal and official saying: yeah, we believe it. [LB934]

SENATOR ASHFORD: No, no, of course. I mean, and...but I... [LB934]

SRIYANI TIDBALL: We want to see you saying you believe in this problem and... [LB934]

SENATOR ASHFORD: And...and that's why we passed Senator McGill's legislation. [LB934]

SRIYANI TIDBALL: Before. [LB934]

SENATOR ASHFORD: Before. [LB934]

SRIYANI TIDBALL: I know. Part of it. [LB934]

SENATOR ASHFORD: A lot of it. But, yeah, maybe we could have done more of it. But it's good to constantly be challenged. [LB934]

SRIYANI TIDBALL: Well, I know, and we are going to be relentless, so... [LB934]

SENATOR ASHFORD: Okay. [LB934]

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SRIYANI TIDBALL: You know, I represent a lot of colleagues. We are...I'm part of a team of professors that have been doing research. We've had five conferences for the last five years on research in human trafficking. This is a real issue. It is happening in Nebraska. It's happening in the country, in the world. Actually, one of the things we did recently in our class was we looked at 20 states and cities to see what they were doing. And if you would be interested in the report...it's just a one-pager that...we'd be more than happy to send it to you. But I think we can be right there in Nebraska in the middle of the country doing something important, at least a very important bill to pass. And I hope you would. [LB934]

SENATOR ASHFORD: Okay. I think you're right. Okay, any other questions? And we know you're doing great work at the university. I was just kidding you a little bit. [LB934]

SRIYANI TIDBALL: Oh, that's okay. [LB934]

SENATOR ASHFORD: Okay. Thank you. Next proponent, Jim is next. [LB934]

JIM CUNNINGHAM: Somewhere in my stuff here I have the form filled out. And if I don't find it right now, I'll give it to you before I leave. [LB934]

SENATOR ASHFORD: You're vaguely familiar to us. [LB934]

JIM CUNNINGHAM: I've got more paperwork than I can keep track of. Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, and that's spelled J-i-m C-u-n-n-i-n-g-h-a-m. I represent the Nebraska Catholic Conference, which is an agency operated jointly and cooperatively by the three Catholic dioceses in Nebraska. I'm here...and I want to first of all, at the onset here, I want to thank and commend Senator McGill in particular and others for the leadership that they've given to addressing this compelling problem as a matter of public policy. And I have to tell you I take a little extra bit of appreciation and positive vibe about this because Senator McGill is my state senator, from Lincoln's best district, the 26th Legislative District. Human trafficking is a shocking, horrific offense against basic human dignity and rights of the human person. Worldwide, it is estimated to be a \$32 billion-a-year growth industry. Recently, in mid-December, in an address to an assembly of diplomats from all over the world, Pope Francis dedicated that entire address to human trafficking. He called it a grave violation of the human rights of those victimized and an offense against their dignity, as well as a defeat for the worldwide community. Soon, the increasingly active anti-trafficking program of the United States Conference of Catholic Bishops will be launching its new "Become a SHEPHERD" campaign, and the word "SHEPHERD" is meant to mean "Stop Human Trafficking and Exploitation; Protect; Help; Empower; and Restore Dignity." This program will be used to educate Catholic parishes throughout the country on human trafficking and encourage personal commitments to combatting

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human trafficking. As part of launching this program on February 8 upcoming--that's the feast day of St. Josephine Bakhita--a national day of prayer will be held for trafficking victims and survivors. Before closing, I just have one small concern, and this might be somewhat of an overreaction on my part; it's more of a technical thing than anything. But if you'd look at page 3, up at the top, on line 1 and 2...and I...this actually occurred to me when I was reading the fiscal note, and so I went looking for it in the bill. I might suggest that rather than using the term "human trafficking organizations," it might be better to say "anti-trafficking organizations." [LB934]

SENATOR ASHFORD: Anti...anti-trafficking. Yeah, it's... [LB934]

JIM CUNNINGHAM: I don't think our organization or the others are into supporting human trafficking, and that was kind of the interpretation I got, so... [LB934]

SENATOR ASHFORD: Your position is quite clear... [LB934]

JIM CUNNINGHAM: Good. [LB934]

SENATOR ASHFORD: ...on this issue. [LB934]

JIM CUNNINGHAM: Good. Thank you very much. [LB934]

SENATOR ASHFORD: Thank you. [LB934]

JACLYN BLAKE: Hi, my name is Jaclyn Blake, J-a-c-l-y-n B-l-a-k-e; and I am a student at the university representing NUSAMS, which is Nebraska Students Against Modern-Day Slavery. As a student, I was unaware that human trafficking existed, when I moved here three years ago. I met Sriyani, and I joined NUSAMS, which was...totally didn't know what human trafficking was and now total advocate to combat it. We...there was no awareness programs to tell students what human trafficking was and how...what are the signs to look for. As students, we are the most vulnerable population to be trafficked. An awareness campaign would show these children and students what they need to look out for in regard to the signs of being trafficked, especially how easy it is with social media these days. NUSAMS, we have done some stuff around the university but not as much as we could with help on the state's level, so on your part and with the Governor's task force. We need support by you, our senators, to get the word out that human trafficking does exist here in Nebraska. And, frankly, when I talk to all my friends, they have no idea that it's a problem. And I try to tell them it, but they still don't believe me. So with the state's help of saying that it's problem, we can combat this. [LB934]

SENATOR ASHFORD: Thank you. So where are you from originally? [LB934]

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JACLYN BLAKE: I'm from Arizona. [LB934]

SENATOR ASHFORD: Oh. [LB934]

JACLYN BLAKE: So the border, we kind of know that it happens. [LB934]

SENATOR ASHFORD: So what brought you to the University of Nebraska? [LB934]

JACLYN BLAKE: To study criminology. But now I've worked into human rights, so now I'm actually going to work with Sriyani this summer and do some human trafficking work. [LB934]

SENATOR ASHFORD: Oh, Senator McGill is a real example of what you can do in government... [LB934]

JACLYN BLAKE: Um-hum. [LB934]

SENATOR ASHFORD: ...to address a problem aggressively. [LB934]

JACLYN BLAKE: Yeah. [LB934]

SENATOR ASHFORD: And this is a big problem. So thanks for coming up. [LB934]

JACLYN BLAKE: Thank you. [LB934]

SENATOR ASHFORD: Okay. All right. Hi. How are you? [LB934]

LINDA BURKLE: Hi. My name is Linda Burkle; that's spelled L-i-n-d-a, last name B-u-r-k-l-e. I did not intend to speak today, but I decided I would just say a few words in support of this particular bill and the creation of a statewide service coordinator. I've actually worked with human trafficking victims probably since the late 1970s, although we didn't call them victims then; they were child prostitutes. In 2002, with the first federal legislation, the Salvation Army, which I represent nationally, received a grant from the Department of Justice to develop a training curriculum to train providers as well as people in law enforcement and prosecution to address this issue. And we've been involved at the forefront since that time. We have programs throughout the country. Here in Omaha, or, excuse me, in Nebraska...I work out of Omaha, but we do have a number of services, both residential as well as counseling and therapeutic and support services, available for trafficking victims. I have had the privilege, because of my travels and involvement nationally on an anti-trafficking council for over ten years now, to participate in task forces in various states: California, Florida, Chicago, etcetera. And I would support the continuation of the task force. We have a lot of work to do. I was the chair of the committee that developed the training curriculum for law enforcement and

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people in corrections. We completed our task and submitted that to the Governor and the Legislature December 1 of 2012. We have since re-formed, and I was on a conference call earlier this week with the new Crime Commissioner, Darrel Fisher. And we have re-formed that, and now I'm going to be chairing a new committee which will involve education in schools and other venues, as well as broad-based community awareness. So I completely support the task force, but, more importantly...or equally importantly, I support the creation of a statewide coordinator. While I was sitting here, I got a text...an e-mail from the Department of Justice with a long list of prosecutions that have been successful just in the last few months around the country. And you might be surprised to know that one of them is in Sioux Falls, South Dakota. And so it even hits in South Dakota, which is much more rural and isolated, in many respects, than Nebraska is. So that's really all I want to say, is I completely support this and I do...will do whatever I can to make sure that we eradicate human trafficking in the state of Nebraska. Thank you. [LB934]

SENATOR LATHROP: Thanks for what you do. [LB934]

SENATOR ASHFORD: Now, Linda, are you still doing your residential work at The Salvation Army? [LB934]

LINDA BURKLE: Yes, and we have been...we've been one of the... [LB934]

SENATOR MCGILL: ...the mike. Can you talk... [LB934]

SENATOR ASHFORD: Yeah, you have to speak...you have to speak to the entire state. [LB934]

LINDA BURKLE: I want to run. The entire state, wow. This is a place of power, huh? Yes, in fact, we have been listed on the national resource database for human trafficking services since its inception, when the Polaris Project started that years ago. We provide residential care for both... [LB934]

SENATOR ASHFORD: Right, and you're still...you are still actively... [LB934]

LINDA BURKLE: Well, it's one of the programs I oversee; I'm at the 3,000-level with three states, but...but, yes, it is under my administration, correct. [LB934]

SENATOR ASHFORD: And you've done such a great job, so... [LB934]

LINDA BURKLE: Thank you. [LB934]

SENATOR ASHFORD: Thank you... [LB934]

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LINDA BURKLE: Thank you. [LB934]

SENATOR ASHFORD: ...very much. Okay, any other...anyone else? Anybody opposed to this bill? Anyone neutral? Senator McGill? And then you have the next bill as well. (See also Exhibits 9, 10, and 14) [LB934]

SENATOR MCGILL: Yeah, I want to thank Linda for the awesome job she's done. They were one of the first organizations, really, working on this issue in the state. And I'm remiss for not mentioning them in the intro, because...and she personally has done an incredible job on the task force and has been someone who, I think, has really pushed to make sure some things get done there. And so I'm just very grateful to her and, really, all the advocates. Like, I've met with a group of nuns up in Omaha who want to use old convents as a place for the...you know, there are all these ideas out there, but we're lacking the one person to really make sure these things get done. We've had some public...some private funders try to put some money into Project Harmony to maybe develop some strategic plan. And it just...it wasn't happening; it wasn't coming together, because there is just so much that everybody who's currently at a nonprofit...it's like this is just another thing on top of everything else they're doing, and they can't focus enough on this to really make some of these ideas a reality. Like, we need a statewide coalition Web site, all these things, and... [LB934]

SENATOR ASHFORD: Well, I wonder... [LB934]

SENATOR MCGILL: I could talk forever about this. [LB934]

SENATOR ASHFORD: Yes, you can, and that's good. But I wonder, by changing the focus of the law on the prosecutorial side... [LB934]

SENATOR MCGILL: Um-hum. [LB934]

SENATOR ASHFORD: ...have you seen any results of that, or do you know how that's...? [LB934]

SENATOR MCGILL: A little bit. So many of the issues...and we'll get into that a little bit in my next bill. [LB934]

SENATOR ASHFORD: Well, go ahead if you want to... [LB934]

SENATOR MCGILL: But, you know, the FBI has an agent in Omaha that works on this issue, and so many of the big prosecutions are taking place at the federal level... [LB934]

SENATOR ASHFORD: Right. [LB934]

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SENATOR MCGILL: ...as opposed to at the state level. But I know our laws were used for the mother in Kearney, for instance, who was selling her children. [LB934]

SENATOR ASHFORD: Wow. Just recently. [LB934]

SENATOR MCGILL: So...yes. Yeah, much more recently. [LB934]

SENATOR ASHFORD: Right. And that was...that would be under the changes that we made... [LB934]

SENATOR MCGILL: Um-hum. [LB934]

SENATOR ASHFORD: Okay. LB933. [LB933]

SENATOR MCGILL: All right. LB933 is a step in strengthening Nebraska's laws regarding human trafficking. The bill would add new methods of coercion as adopted by the Uniform Law Commission in 2013. They can be found in the Uniform Act on the Prevention Of and Remedies For Human Trafficking. Larry Ruth is here to talk more in detail about this. But this is something that they're...the Uniform Law Commission has really taken on in the last year. These are brand-new recommendations that...they're asking many states to make tweaks to their laws to make sure they're as uniform as possible. The bill would expand the definitions to reflect the reality of what is happening to victims and put Nebraska in line with other states as they're considering adopting these new provisions. The new forms of coercion include debt bondage, abusing or threatening to abuse the legal process against another person, controlling or threatening to control another person's access to a controlled substance, using another person's physical or mental impairment when the impairment has a substantial, adverse effect on the other person's cognitive function. LB933 also initially included a provision restoring a penalty for labor trafficking and sex trafficking that was removed during LB255. This provision was not a result of the recommendations of the Uniform Law Commission, and it's on page 5, lines 20 to 22. And it's my intent to remove those. That...it was a kind of a broad, overarching "human trafficking is a felony." But I think we're now covering all the different forms appropriately. I am open to hearing feedback on the level of felonies that we have applied to each of these different types of coercion, because we have everything in the books right now from some types of coercion being a Class I misdemeanor, and then some are Class III felonies. And so we did our best to make an assessment of what we felt they should be at, but I'm open to negotiation on that. It's just important to get all these different types of coercion on the books, to make sure that these offenders...it's not always just tying someone up and keeping them in a hotel room; they use manipulation and coercion of many different ways. And so just making sure we're thorough and in line with the Uniform Law Commission to the best of our ability. And I thank you for your consideration. [LB933]

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SENATOR ASHFORD: Thank you, Senator McGill. Any questions of Amanda? I don't see any. [LB933]

SENATOR MCGILL: All right. [LB933]

SENATOR ASHFORD: I don't see Larry, either, but... [LB933]

SENATOR MCGILL: Oh, did Larry...oh, well, somebody else is here instead of Larry, then. [LB933]

SENATOR ASHFORD: Yeah, okay. [LB933]

SENATOR MCGILL: (Laugh) He was here earlier. [LB933]

SENATOR ASHFORD: He moves quickly. [LB933]

STEVE WILLBORN: (Exhibits 11 and 12) Good afternoon. My name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm here to support LB933. I'm Larry Ruth's pinch hitter, so be nice to me; this is his baby. I am also here as one of the commissioners on the Nebraska Uniform Law Commission. Our state's commission is part of a national conference of the commissions of all the states. And Nebraska's other current commissioners are Judge Arlen Beam, Jill Robb Ackerman, Joanne Pepperl, Harvey Perlman, and Larry Ruth. I just wanted to say, as you probably know, the Uniform Law Commission is in its 123rd year. There are some 40 statutes, I think, in this state that arose out of the Uniform Law Commission work, including things like the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Prudent Investor Act. And this Unicameral, and before it the Bicameral, supported us for decades, and we're very appreciative of it. Last year the Legislature passed and the Governor signed, as you know, LB255--it was sponsored by Senator McGill--dealing with human trafficking. Turns out that, at the same time, the Uniform Law Commission was in the final drafting of a new uniform act on that same subject. In July, after you had acted, the Uniform Law Commission adopted the Uniform Act on Prevention and Remedies of Human Trafficking, which is in your folder along with some other information. We were, as I said, later than you, so we didn't have a work product to share with you last year as you were working on LB255. After adopting the uniform act, we did a comparison of your LB255 and our uniform law to determine if we could offer any information on possible improvements to Nebraska's law. We found one area where we think substantial improvement could be made, and Senator McGill has introduced that in the form of LB933. I'm not going to dwell on what a scourge human trafficking is; you've heard about that already. LB255 is limited in the ways in which it defines human trafficking; basically, it defines four areas mostly involving personal or physical restraint: personal injury, physical restraint, misuse of government identification, and financial harm. The

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current bill would recognize other methods that come from the uniform law: debt bondage, abuse of legal process, controlling access to drugs, and abuse of physical or mental impairment. There was an attempt to make the structure of the two acts the same. My testimony has to be brief, so I just want to emphasize that the American Bar Association encourages the Uniform Law Commission to engage in this process. The Uniform Law Commission did engage in the process, with the help of many interest groups. The American Bar Association approved our act and these definitions of human trafficking. And the Uniform Law Commission, as always, thinks there's a great deal of benefit in uniformity here. The language along with...the text along with the act says that uniformity will involve coordination across the states; it will discourage forum shopping by traffickers, who tend to do that sort of thing; and it will help national and regional victim-advocate groups respond to this problem. Thank you... [LB933]

SENATOR ASHFORD: Thank you, Steven. [LB933]

STEVE WILLBORN: ...Senators. [LB933]

SENATOR ASHFORD: Thanks for your work in these matters. Any questions of...? [LB933]

SENATOR LATHROP: No, but just a comment on the Uniform Law Commission. You know, we sit in this committee, and we have a variety of lawyers and non-lawyers, and even among the lawyers we can't know all of the different...and scrub all of the different legislation or have all the background. And what you guys bring to us--the bar association to some extent--but usually when it comes from the Uniform Law Commission, we can rely on it as being well thought out. And we appreciate your service... [LB933]

STEVE WILLBORN: Thank you so much, Senator Lathrop. [LB933]

SENATOR LATHROP: ...very much so. [LB933]

STEVE WILLBORN: Thank you. [LB933]

SENATOR ASHFORD: It is an auspicious group. Thanks, Steven. [LB933]

SENATOR LATHROP: Yeah. [LB933]

STEVE WILLBORN: Thank you. [LB933]

SENATOR ASHFORD: Okay, those who would like to testify for this bill, for the bill. Al, are you going to...? [LB933]

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AL RISKOWSKI: Sure. [LB933]

SENATOR ASHFORD: Okay. Come on up. [LB933]

AL RISKOWSKI: I'll refer back to the--Al Riskowski, Nebraska Family Alliance; it's R-i-s-k-o-w-s-k-i--refer back to the task force piece that I handed out earlier. And on page 26 and 27-28, there are just two cases we included; but there are numerous cases that are happening here in the state of Nebraska where the FBI, State Patrol, and others, U.S. Department of...Attorney General, are busting cases here in the state of Nebraska. Just for time's sake, I'm going to tell you just two quick stories and why I believe this type of legislation is helpful to prosecute more individuals who will hold individuals as they do. In this particular case, this was a man actually out of New Jersey but was prosecuted here in our area. And in the actual court, here is what was stated. It said: Persons formally working as prostitutes for the defendant testified at trial regarding their histories of very troubled childhood, mental/emotional problems, and substance abuse; these persons testified that the defendant lured them to work on promises of long-lasting personal relationships; however, once they engaged in prostitution for the defendant, the promises evaporated; all the money from these sex acts they performed at defendant's direction went to the defendant; one of the victims testified she was then physically assaulted by the defendant, including being whipped with a belt and severely beaten on at least two other occasions, and for threatening her, that she might go to the police; another victim testified about having been at a party weekend, forced to engage in prostitution by threats of serious harm against the victim, her family, and particularly the victim's 2- to 3-year-old daughter. And as we have interviewed and been in contact with numerous victims, this is the same type of story we just hear over and over and over again, that they're being victimized. And as...actually we helped rescue one girl right here in Lincoln. And she was being forced to service six to ten men every night, or, I should say, each day. And as you think about that, what woman wants to willingly do that? There was force being used; there was threats against her family, not only against them to force her to do this, but if she went to the police or talked to the police, they were going to beat up her family, as well. Finally she came out only under the belief that she might be killed in the process. That was right here in Lincoln, Nebraska. I could tell you many stories; it's very tragic. But that's why I believe this type of legislation is very helpful. And thank you for your time. [LB933]

SENATOR ASHFORD: Thanks...yeah, thank you. Thanks, Al. Any...I don't see any questions. Thank you. Any other proponents? [LB933]

SRIYANI TIDBALL: Sriyani Tidball, S-r-i-y-a-n-i T-i-d-b-a-l-l. I just wanted to give my total support for this. You know, I've spent some time talking to victims of trafficking and realizing that they are such a group that's so misunderstood and so underrepresented and, the fact that now that I'm studying demand, that the buyers of sex get away so easily; it's a very sad situation. So, you know, having laws like this, these kinds of things

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included in laws, gives me a little hope that maybe we can do something for the victims. So thank you. [LB933]

SENATOR ASHFORD: Thank you, Sriyani. Any other proponents? Linda. [LB933]

LINDA BURKLE: Well, again... [LB933]

SENATOR ASHFORD: Were you not going to testify again and now you're going to testify? [LB933]

LINDA BURKLE: I wasn't going to testify at all, but I just can't...I can't contain myself. Linda Burkle, B-u-r-k-l-e. I just was thinking back, as Al and Sriyani were sharing, about some of the women and girls I worked with. And truly, you know, if you were to ask any of these young people and not-so-young people if they were victims of human trafficking, they would say no; this is the love of their life, this is their boyfriend, is often what they would say. But yet when you start to delve into it, there is so much coercion. And I think about...there's the obvious beatings and things, but the...many of the women and young women we work with have children. And these little babies--infants, toddlers--are being held, basically, hostage while their mothers are turning tricks for the pimp, the trafficker. And so I think any way we can tighten this up is better. At this point, to my recollection, although I could be wrong, I don't think we've actually had a successful prosecution that has been simply on human trafficking in Nebraska. I know the case that Senator Amanda McGill mentioned earlier, in Kearney, there were some other charges that were successful, but...so the more we can tighten this up, we can actually start using this successfully in getting these prosecutions and calling it for what it is, which is an egregious thing, with more slaves now than ever before in the history of the world. So, again, anything we can do to tighten it up I...I'm fully in support of, and we'll do whatever we can on our end as policy influencers and as people providing services to those that need them. Thank you. [LB933]

SENATOR ASHFORD: Thank you, Linda. Any other proponents? Okay. Any opponents? Any neutral testifiers? Chris. [LB933]

CHRIS EICKHOLT: (Exhibit 13) Good afternoon. Good afternoon, Chairman Ashford and members of the committee. Chris Eickholt, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity on the bill. A letter is being distributed from our organization that details our position regarding the bill. Generally the concern that we have with the bill is that substantively the bill overlaps and recriminalizes many things that are already criminal in Nebraska in differing statutes. And we also have some concerns about some of the language in the bill itself. However, we are constructive on the bill. And the letter that's being distributed lists some of the points that we noted, that could be either improved or corrected or at least appreciated. A copy has been given to Senator McGill; a copy has been given to

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Larry Ruth. And Larry Ruth did indicate that he'd be willing to work with us regarding our concerns. Just a couple of points. There's different ways that the state can prove the charge of pandering. And 28-802(1)(d) could arguably be debt bondage. That's where a person, sort of, is prostituted for exchange of a debt. The reason it matters is because pandering is punishable as a Class IV felony, and then it's enhanced to a Class III if the victim is younger or if it's a second offense of the defendant. This bill would make debt bondage a Class I misdemeanor. And that's some of the concerns with recriminalizing or having overlapping laws: that you've got the disparate penalties, you've got issues of double jeopardy if a person is charged under both counts. As a defense attorney, I'm going to ask for a lesser included offense if it's a lesser charge, if I can argue that my client's activity was somehow... [LB933]

SENATOR ASHFORD: Would it be better if we just enhanced the penalty on the underlying...? [LB933]

CHRIS EICKHOLT: And that could be one way to look at it. [LB933]

SENATOR ASHFORD: I mean, could you simply...you could have criteria for enhancement that would... [LB933]

CHRIS EICKHOLT: That's right. [LB933]

SENATOR ASHFORD: ...like we do for hate crimes. I mean, I see this, and always have done, a little bit, as a sort of...sort of like...akin to...when we started doing hate crimes bills in the late '80s, I mean, the same, I mean, we were taking the same offense and we were punishing it with a higher penalty. [LB933]

CHRIS EICKHOLT: That's right. [LB933]

SENATOR ASHFORD: And...and...but then what we did is use it as an enhancement tool. Maybe that's a cleaner way to do it. I don't know. [LB933]

CHRIS EICKHOLT: That's right. And that's what we sort of indicated in the letter we wrote. [LB933]

SENATOR ASHFORD: Yeah. [LB933]

CHRIS EICKHOLT: Or just amending the current statutes to accommodate for a different theory of prosecution, with the same penalty. But one of the concerns that you have with doing this is just the disparate penalties. [LB933]

SENATOR ASHFORD: My point is, I think...and I won't interrupt your testimony... [LB933]

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CHRIS EICKHOLT: Um-hum. [LB933]

SENATOR ASHFORD: ...but I think that enhanced...that ability to enhance an underlying offense which is a general violation of the law almost gives it more gravitas, in a way, than even separating it out in a separate section... [LB933]

CHRIS EICKHOLT: That's right. [LB933]

SENATOR ASHFORD: ...possibly. [LB933]

CHRIS EICKHOLT: That's one way to look at it. That's right. [LB933]

SENATOR ASHFORD: Yeah. [LB933]

CHRIS EICKHOLT: Another concern we have with the bill is just the phrase, when dealing with the theories of forced labor, is the term, quote, abuse or threaten to abuse the legal process. That's not really defined anywhere in the bill. Not only is the term "abuse" not defined, but the term...terms "legal process" are not defined. And that could be calling the police, I suppose, or filing a lawsuit or petitioning to the government, really, in any way. And I don't really know...we couldn't really determine what that was meant...what that's supposed to mean, what that's directed at. And that's just a concern that we have with the bill as well. And there's...the letter details there's some concern regarding the further definition and how that interrelates to existing crimes regarding abuse of a vulnerable adult, the controlled substances statute that references access to a controlled substance, actually references all controlled substances, including illegal controlled substances. So a person could be prosecuted for controlling or restricting illegal controlled substances (inaudible). And I think that's just a drafting oversight on the bill itself; I don't believe that...I would not believe that was the intent of the bill itself. But anyway, as I said before, we are constructive on it, and those are some of the concerns that we have. [LB933]

SENATOR ASHFORD: I think...thanks, Chris. Constructive suggestions. Senator McGill. [LB933]

SENATOR MCGILL: (Inaudible) not bad. All I have to add is that we'll just be working with the Uniform Law Commission and try to work out some of the language as we best see fit. And that's it. [LB933]

SENATOR ASHFORD: Thank you for everything you've done on this... [LB933]

SENATOR MCGILL: All right. Thank you. [LB933]

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SENATOR ASHFORD: ...for all these years. That concludes the hearing. So I would like, if we could, just take two seconds with the committee, maybe. I just want to go over... [LB933]